

## DRAFT COMPROMISE A

### Article 4 - Designation and powers of competent authorities

*Bold/italics* text represents changes to the Commission proposal.

#### COVERING AM 33, AM JURI14, AM 34

##### *Article 4*

##### *Designation and powers of the competent authorities*

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, *and ESMA (AM 33 Delvaux)* of that designation, and where there is more than one competent authority, of the functions and duties of each competent authority.
2. Member States shall ensure that the competent authorities supervise the activities of investment firms, and, where applicable, of investment holding companies and mixed financial holding companies, to assess compliance with the requirements of this Directive and of [Regulation (EU) ---/---[IFR].
3. Member States shall ensure that the competent authorities have the necessary powers, including the power to conduct on-the-spot checks in accordance with Article 12, to obtain the information needed to assess the compliance of investment firms and, where applicable, of investment holding companies and mixed financial holding companies, with the requirements of this Directive and of [Regulation (EU) ---/---[IFR], and to investigate possible breaches of those requirements.
4. Member States shall ensure that the competent authorities have the expertise, resources, operational capacity, powers and independence necessary to carry out the functions relating to the prudential supervision, investigations and penalties set out in this Directive.
5. Member States shall require investment firms to provide their competent authorities with all the information necessary for the assessment of the compliance of investment firms with the national rules transposing this Directive and compliance with [Regulation (EU) ---/---[IFR]. Internal control mechanisms and administrative and accounting procedures of the investment firms shall enable the competent authorities to check their compliance with those rules at all times.
6. Member States shall ensure that investment firms register all their transactions and document systems and processes which are subject to this Directive and [Regulation (EU) ---/---[IFR] in such a manner that the competent authorities are able to assess compliance with the national rules transposing this Directive and compliance with [Regulation (EU) ---/---[IFR] at all times.

Article 4a (new)

Empowerment to subject certain investment firms to the requirements of Regulation (EU) 575/2013

Competent authorities, including consolidated supervisors as per Article 111 of [---CRD---], may decide to subject an undertaking, which is not a credit institution as defined in Article 4 of Regulation (EU) 575/2013 to the requirements of that Regulation, provided that the following conditions are met:

(a) the undertaking is not a commodity and emission allowance dealer, a collective investment undertaking or an insurance undertaking;

(b) the undertaking carries out any of the activities referred to in points (3) and (6) of Section A of Annex I of Directive 2014/65/EU;

(c) the undertaking carries out activities similar to those commonly associated with undertakings that take deposits or other repayable funds from the public and grant credit on their own accounts. ~~These activities include, but are not limited to, the following:~~

~~(i) lending to businesses;~~

~~(ii) offering risk-free investment products for idle cash balances to the public;~~

~~(iii) high degrees of on-balance sheet or off-balance sheet leverage;~~

~~(iv) high degree of interconnectedness with other institutions as defined in point (3) of paragraph 1, or other financial institutions as defined in point (26) of paragraph 1.~~

(d) the activities referred to under points (b) and (c) are carried out at such a scale that the failure of the undertaking may pose a systemic risk as defined in paragraph 10 of Article 3 of Directive 2013/36.

EBA, in consultation with ESMA, and taking into account Commission Delegated Regulation (EU) 2015/488, shall draft regulatory technical standards to ensure a consistent application of the above mentioned points a) to d).

EBA shall submit those draft regulatory technical standards to the Commission by [nine month from the date of entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

(redrafted based on AM 288 Giegold, AM 273 Cornillet, AM 274 Bérès, as discussed in shadows' meeting on 10 July 2018)

**Kommentiert [BF1]:** The criterion remains but the illustrative list is deleted as it is too close to pure banking activities. The deletion also gives more discretion for CAs to subject certain big Class 2 investment firms to CRR/CRD.

## DRAFT COMPROMISE B

Article 8, 8a, 8b - Initial Capital, References to initial capital in Directive 2013/36/EU, Indemnity Insurance

*Bold/italics* text represents changes to the Commission proposal.

**COVERING AM JURI 17 and AMs 5, 37, 38**

### *Article 8 Initial capital*

1. The initial capital of an investment firm required pursuant to Article 15 of Directive 2014/65/EU for the authorisation to provide the investment services or perform the investment activities listed in points (3), (6), (8) or (9) of Section A of Annex I to Directive 2014/65/EU shall be EUR 750 000.
2. The initial capital of an investment firm required pursuant to Article 15 of Directive 2014/65/EU for the authorisation to provide the investment services or perform the investment activities listed in points (1), (2), (4), (5) or (7) of Section A of Annex I to Directive 2014/65/EU and which is not permitted to hold client money or securities belonging to its clients shall be EUR 75 000.
3. The initial capital of an investment firm required pursuant to Article 15 of Directive 2014/65/EU for investment firms other than those referred to in paragraphs 1 and 2 shall be EUR 150 000.
4. The Commission shall update, by means of **delegated 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 **delegated implementing** acts shall be adopted in accordance with the **examination** procedure referred to in Article ~~54-56(2)~~.

### *Article 8a [new]*

#### *References to initial capital in Directive 2013/36/EU*

*References to the levels of initial capital set by Article 8 of this Directive shall, as of the date of application of this Directive, be construed as replacing references to the levels of initial capital set by Directive 2013/36/EU as follows:*

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

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

*(c) the reference to initial capital in Article 30 of Directive 2013/36/EU shall be construed as a reference to Article 8(1) of this Directive.*

**Kommentiert [BF2]:** ORAL AM proposed as amending the level of initial is a very important decision that shall not be made via implementing acts. Delegated acts are more appropriate.

Note: this compromise is formally not a compromise but an oral amendment.

*(AM 5 by the Rapporteur, AM 37 Lucke)*

***Article 8b [new]***

***Indemnity Insurance***

***All investment firms providing services under this Directive are required to have a professional indemnity insurance.***

*(AM 38 by the Rapporteur)*

## DRAFT COMPROMISE C

### Article 11 - Cooperation between competent authorities of different Member States

*Bold/italics* text represents changes to the Commission proposal.

#### COVERING AM JURI18 - JURI20, AMs 39-40 and AM JURI 21

*Article 11 (Unchanged COM text)  
Cooperation between competent authorities of different Member States*

1. Competent authorities of different Member States shall cooperate closely for the purposes of their duties pursuant to this Directive and [Regulation (EU) ---/---[IFR], in particular by exchanging information about investment firms without delay, including on the following:
  - (a) information about the management and ownership structure of the investment firm;
  - (b) information about compliance with capital requirements by the investment firm;
  - (c) information about concentration risk and liquidity of the investment firm;
  - (d) information about the administrative and accounting procedures and internal control mechanisms of the investment firm;
  - (e) any other relevant factors that may influence the risk posed by the investment firm.
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.
3. The competent authorities of the home Member State shall act upon information provided by the competent authorities of the host Member State by taking all measures necessary to avert or remedy potential problems and risks as referred to in paragraph 2. Upon request, the competent authorities of the home Member State shall explain to the competent authorities of the host Member State how they have taken into account the information and findings provided by the competent authorities of the host Member State.
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.

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.
6. EBA, in consultation ESMA, shall develop draft regulatory technical standards to specify requirements for the type and nature of the information referred to in paragraphs 1 and 2 of this Article.  
  
Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.
7. EBA, in consultation with ESMA, shall develop draft implementing technical standards to establish standard forms, templates and procedures for the information sharing requirements which are likely to facilitate the supervision of investment firms.  
  
Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.
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*].

**DRAFT COMPROMISE D**

**Title IV Chapter I Section 3 (Article 16-21) - PENALTIES, INVESTIGATORY  
POWERS AND RIGHT OF APPEAL**

*Bold/italics* text represents changes to the Commission proposal.

**COVERING AMs 41-52, JURI28-JURI31**

**SECTION 3  
PENALTIES, INVESTIGATORY POWERS AND RIGHT OF APPEAL**

*Article 16  
Administrative penalties and other administrative measures*

1. Member States shall lay down rules on administrative penalties and other administrative measures in respect of breaches of national provisions transposing this Directive and of [Regulation (EU)---/---[IFR], including where the following occurs:
  - (a) an investment firm fails to have in place internal governance arrangements as set out in Article 24;
  - (b) an investment firm fails to report to the competent authorities, in breach of Article 52(1)(b) of [Regulation (EU) ---/---IFR], information on compliance with the obligation to meet capital requirements as set out in Article 11 of that Regulation, or provides incomplete or inaccurate information;
  - (c) an investment firm fails to report to the competent authorities, in breach of Article 34 of [Regulation (EU) ---/---], information about concentration risk or provides incomplete or inaccurate information;
  - (d) an investment firm incurs a concentration risk in excess of the limits set out in Article 36 of [Regulation (EU) ---/---[IFR], without prejudice to Articles 37 and 38 of that Regulation;
  - (e) an investment firm repeatedly or persistently fails to hold liquid assets in breach of Article 42 of [Regulation (EU) ---/---[IFR], without prejudice to Article 43 of that Regulation;
  - (f) an investment firm fails to disclose information, or provides incomplete or inaccurate information, in breach of the provisions set out in Part Six of [Regulation (EU) ---/---[IFR];
  - (g) an investment firm makes payments to holders of instruments included in the own funds of the investment firm where Articles 28, 52 or 63 of Regulation (EU) No 575/2013 prohibit such payments to holders of instruments included in own funds;

- (h) an investment firm is found liable for a serious breach of national provisions adopted pursuant to Directive (EU) 2015/849<sup>1</sup>;
- (i) an investment firm allows one or more persons not complying with Article 91 of Directive 2013/36/EU to become or remain a member of the management body.

Member States that do not lay down rules on administrative penalties for breaches which are subject to national criminal law shall communicate to the Commission the relevant criminal law provisions.

The administrative penalties and other administrative measures shall be effective, proportionate and dissuasive, **and Member States shall ensure that they are ~~as far as possible~~ set at comparable levels to the ones in other Member States.** (AM 42 Delvaux and Fernández, AM 43 Torvalds and Nagtegaal)

2. The administrative penalties and other administrative measures referred to in the first subparagraph of paragraph 1 shall include the following:

- (a) a public statement which identifies the natural or legal person, investment firm, investment holding company or mixed financial holding company responsible and the nature of the breach;
- (b) an order requiring the natural or legal person responsible to cease the conduct and to desist from repeating that conduct;
- (c) a temporary ban for members of the investment firm's management body or for any other natural persons to exercise functions in investment firms;
- (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;
- (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;
- (f) in case of a natural person, administrative pecuniary penalties of up to EUR 5,000,000, or in the Member States whose currency is not the euro, the corresponding value in the national currency on [date of entry into force of this Directive].

Where an undertaking referred to in point (d) is a subsidiary, the relevant gross income shall be the gross income resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.

Member States shall ensure that where an investment firm is in breach of national provisions transposing this Directive or in breach of [Regulation (EU) ---/---[IFR], penalties may be applied to the members of the management body and to other natural persons who under national law are responsible for the breach.

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<sup>1</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).



3. Member States shall ensure that when determining the type of administrative penalties or administrative measures referred to in paragraph 1 and the level of administrative pecuniary penalties, competent authorities shall take into account all relevant circumstances, including, where appropriate:
- (a) the gravity and the duration of the breach;
  - (b) the degree of responsibility of the natural or legal persons responsible for the breach;
  - (c) the financial strength of the natural or legal persons responsible for the breach, including the total turnover of legal persons or the annual income of natural persons;
  - (d) the importance of profits gained or losses avoided by the legal persons responsible for the breach;
  - (e) any losses incurred by third parties as a result of the breach;
  - (f) the level of cooperation with the relevant competent authorities;
  - (g) previous breaches by the natural or legal persons responsible for the breach;
  - (h) any potential systemic consequences of the breach.

*Article 17*  
*Investigatory powers*

Member States shall ensure that competent authorities have all information gathering and investigatory powers that are necessary for the exercise of their functions, including:

- (a) the power to require information from the following natural or legal persons:
  - (i) investment firms established in the Member State concerned;
  - (ii) investment holding companies established in the Member State concerned;
  - (iii) mixed financial holding companies established in the Member State concerned;
  - (iv) mixed--activity holding companies established in the Member State concerned;
  - (v) persons belonging to the entities referred to in points (i) to (iv);
  - (vi) third parties to whom the entities referred to in points (i) to (iv) have outsourced operational functions or activities.
- (b) the power to conduct all necessary investigations on any person referred to in point (a) that is established or located in the Member State concerned, including the right:
  - (i) to require the submission of documents by the persons referred to in point (a);
  - (ii) to examine the books and records of the persons referred to in point (a) and to make copies or extracts from those books and records;

- (iii) to obtain written or oral explanations from the persons referred to in point (a) or from their representatives or staff;
  - (iv) to interview any other **relevant** person ~~who consents to be interviewed~~ (AM 46 Delvaux) for the purposes of collecting information on the subject matter of an investigation;
- (c) the power to conduct all necessary inspections at the business premises of the legal persons referred to in point (a) and any other undertakings included in the supervision of compliance with the group capital test, where the competent authority is the group supervisor, subject to the prior notification of other competent authorities concerned.

*Article 18 (unchanged COM text)*  
*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 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.

*Article 19*  
*Reporting penalties to EBA*

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 **and ESMA** only and it shall be updated ~~regularly~~ **annually** (*adapted to reflect the outcome of the shadows' meeting on 4 September 2018*).

EBA shall maintain a website with links to each competent authority's publication of administrative penalties and measures in accordance with Article 16 and shall state the period for which each Member State publishes administrative penalties and measures.

*Article 20*  
*Reporting of breaches*

1. Member States shall ensure that competent authorities establish effective and reliable mechanisms to report, **without undue delay** (*based on AM 52 Torvalds and Nagtegaal*), potential or actual breaches of national provisions transposing this Directive and of [Regulation (EU) ---/---[IFR], including the following:
  - (a) specific procedures for the treatment of reports on breaches;
  - (b) appropriate protection against retaliation, discrimination or other types of unfair treatment by the investment firm for employees of investment firms who report breaches committed within the investment firm;
  - (c) protection of personal data concerning both the person who reports the breach and the natural person who is allegedly responsible for that breach, in accordance with Regulation (EU) No 2016/679;
  - (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.
2. Member States shall require investment firms to have in place appropriate procedures for their employees to report breaches internally through a specific and independent channel. Those procedures may be provided for by social partners provided that those procedures offer the same protection as the protection referred to in points (b), (c) and (d) of paragraph 1.

*Article 21 (unchanged COM text)*  
*Right of appeal*

Member States shall ensure that decisions and measures taken pursuant to [Regulation (EU) --/---[IFR] or pursuant to laws, regulations and administrative provisions adopted in accordance with this Directive are subject to a right of appeal.

**DRAFT COMPROMISE E**

Article 23 - Assessment for the purposes of the application of this Section

*Bold/italics* text represents changes to the Commission proposal.

**COVERING AMs 55-60, JURI32**

*Article 23 (unchanged COM text)  
Assessment for the purposes of the application of this Section*

1. For the purposes of this Section, Member States shall ensure that investment firms assess, on an annual basis, and in accordance with points (a) and (b), whether they meet the conditions set out in Article 12(1) of [Regulation (EU) ---/---[IFR]:
  - (a) an investment firm shall determine whether, based on the figures from the two-year period immediately preceding a given financial year, it satisfies the conditions set out in points (c) to (g) of Article 12(1) of [Regulation (EU) ---/---[IFR];
  - (b) an investment firm shall determine whether, based on the figures from that same period, it exceeds on average the limits laid down in points (a), (b), (h) and (i) of Article 12 (1) of [Regulation (EU) ---/---[IFR].
2. This Section shall not apply where, on the basis of the assessment referred to in paragraph 1, an investment firm determines that it meets all of the conditions set out in Article 12(1) of [Regulation (EU) ---/---[IFR].
3. An investment firm that, on the basis of the assessment referred to in paragraph 1, determines that it does not meet all of the conditions set out in that Article 12(1) of [Regulation (EU) ---/---[IFR], it shall comply with this Section as of the financial year following the financial year in which that assessment took place.
4. Member States shall ensure that this Section is applied to investment firms on an individual basis and at group level.

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.
5. Competent authorities may set a shorter period than the two years referred in paragraph 1 of this Article where both of the following conditions are met:
  - (a) the business of the investment firm has been subject to a material change; and
  - (b) as a result of point (a), the investment firm meets the conditions set out in Article 12(1) of [Regulation (EU) ---/---[IFR].

6. EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify the method for calculating the average referred to in paragraph 1(b) of this Article. EBA shall submit those draft regulatory technical standards to the Commission by [*date of entry into force of this Directive*].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

## DRAFT COMPROMISE F

### Article 24 - Internal Governance

***Bold/italics*** text represents changes to the Commission proposal.

#### COVERING AMs 61-63

##### *Article 24 Internal governance*

1. Member States shall ensure that investment firms have robust governance arrangements, including all of the following:
  - (a) a clear organisational structure with well defined, transparent and consistent lines of responsibility;
  - (b) effective processes to identify, manage, monitor and report the risks investment firms are or might be exposed to;
  - (c) adequate internal control mechanisms, including sound administration and accounting procedures;
  - (d) remuneration policies and practices that are consistent with and promote sound and effective risk management.
2. When establishing the arrangements referred to in paragraph 1, the criteria set out in Articles 26 to 31 of this Directive, as well as in Article 9 of Directive 2014/65/EU, shall be taken into account.
3. The arrangements referred to in paragraph 1 shall be comprehensive and proportionate to the nature, scale and complexity of the risks inherent in the business model and the activities of the investment firm.
4. EBA, in consultation with ESMA, shall ~~issue guidelines on~~ ***develop draft regulatory technical standards to specify the content of*** the application of the governance arrangements referred to in paragraph 1. ***EBA shall submit those draft regulatory technical standards to the Commission by [twelve months from the date of entry into force of this Directive].***

***Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010. (AM 61 Giegold)***

Note: *this compromise should be seen in conjunction with Compromise IA regarding environmental, social, or governance (ESG) risks, and with Compromise P on the review clause regarding ESG risks (Article 60, paragraph 1, point aa (new))*

## DRAFT COMPROMISE G

### Article 25 - Country-by-country reporting (CBCR)

***Bold/italics*** text represents changes to the Commission proposal.

#### COVERING AMs 3, 26, 6, 64-79

##### *Article 25 Country-by-country reporting*

1. Member States shall require investment firms ~~which do not meet the criteria defined in Article 12 of [IFR]~~ 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.

**Kommentiert [BF3]:** Decision by shadows to delete as it repeats Article 23(2).

*(Note: reinstating COM wording as the entire section 2 on internal governance, transparency etc. does in any case not apply to class 3 firms. Repetition deemed useless at Shadows' meeting on 12 September 2018)*

## DRAFT COMPROMISE H

### Article 26 - Treatment of risks

*Bold/italics* text represents changes to the Commission proposal.

#### COVERING AMs 7, 80-82

##### *Article 26 Treatment of risks*

1. Member States shall ensure that the management body of the investment firm approves and periodically reviews the strategies and policies on the risk appetite of the investment firm, and on managing, monitoring and mitigating the risks the investment firm is or may be exposed to, taking into account the macroeconomic environment and the business cycle of the investment firm.
2. Member States shall ensure that the management body devotes sufficient time to ensure proper consideration of the risks referred to in paragraph 1 and that it allocates adequate resources to the management of all material risks to which the investment firm is exposed.
3. Member States shall ensure that investment firms establish reporting lines to the management body for all material risks and for all risk management policies and any changes thereto.
4. Member States shall ~~determine which~~ **require all investment firms which do not meet the criteria defined in Article 30(4) a)(AM 81 Delvaux)** ~~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.

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. (AM 7 by the Rapporteur, AM 80 Lucke)~~

5. Member States shall ensure that the management body in its supervisory function and, where one has been established, the risk committee of that management body, has access to information on the risks to which the firm is or may be exposed.



*Note: this compromise should be seen in conjunction with Compromise IA regarding environmental, social, or governance (ESG) risks, and with Compromise P on the review clause regarding ESG risks (Article 60, paragraph 1, point aa (new))*

## DRAFT COMPROMISE I

### Articles 28 - 32: Remuneration Policies

***Bold/italics*** text represents changes to the Commission proposal.

#### COVERING AMs 2, 25, 8-11, 85-141, JURI33 - JURI45

##### *Article 28 Remuneration policies*

1. Competent authorities shall ensure that investment firms, when establishing and applying their remuneration policies for 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 ***or of the assets that it manages*** (AM 85 Giegold), comply with the following principles:
  - (a) the remuneration policy is clearly ~~and~~ documented ***and proportionate to the size, internal organisation and nature, as well as the scope and complexity of the activities of the investment firm;*** (AM 87 Ferber)
  - (aa) ***the remuneration policy is non-discriminatory meaning that same or similar type of jobs will be equally remunerated regardless of gender*** (AM 86 by Gill and Delvaux, slightly redrafted)
  - (b) the remuneration policy is consistent with and promotes sound and effective risk management;
  - (ba) ***the remuneration policy should not only reflect short term profitability, but also take into account long term effects of the investment decisions taken*** (AM 88 by Tang and Delvaux)
  - (c) the remuneration policy contains measures to avoid conflicts of interest, encourages responsible business conduct and promotes risk awareness and prudent risk taking;
  - (d) the management body in its supervisory function adopts and periodically reviews the remuneration policy and has the overall responsibility for its implementation;
  - (e) the implementation of the remuneration policy is subject to a central and independent internal review by control functions;
  - (f) staff engaged in control functions are independent from the business units they oversee, have appropriate authority, and are remunerated in accordance with the achievement of the objectives linked to their functions, regardless of the performance of the business areas they control;
  - (g) the remuneration of senior officers in the risk management and compliance functions is directly overseen by the remuneration committee referred to in Article 31 or, where such a committee has not been established, by the management body in its supervisory function;

- (h) the remuneration policy, taking into account national rules on wage setting, makes a clear distinction between the criteria applied to determine the following:
  - (i) basic fixed remuneration, which primarily reflects relevant professional experience and organisational responsibility as set out in an employee's job description as part of his or her terms of employment;
  - (ii) variable remuneration, which reflects a sustainable and risk adjusted performance of the employee, as well as performance in excess of the employee's job description.
- (i) the fixed component shall represent a sufficiently high proportion of the total remuneration so as to enable the operation of a fully flexible policy on variable remuneration components, including the possibility to pay no variable remuneration component.

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.

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.

4. EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify appropriate criteria to identify the categories of individuals whose professional activities have a material impact on the investment firm's risk profile as referred to in paragraph 1. ***EBA and ESMA shall take due account of Commission Recommendation 2009/384/EC of 30 April 2009 on remuneration policies in the financial services sector as well as existing remuneration guidelines under UCITS, AIFMD and MiFID II and aim to minimise divergence from existing provisions.*** (AM 98 Ferber)

EBA shall submit those draft regulatory technical standards to the Commission by [nine months from the date of entry into force of this Directive].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Article 10 to 14 of Regulation (EU) No 1093/2010.

#### Article 29

##### *Investment firms that benefit from extraordinary public financial support*

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:~~ ***it does not pay any variable remuneration.*** (AM 102 Delvaux et al., this also addresses AM 103 Viegas)

Kommentiert [BF4]: Reinstatement of COM original proposal

- ~~(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; (AM 104 Delvaux et al., AM 105 Viegas)~~
- ~~(b) investment firms shall establish limits to the remuneration of the members of the management body of the investment firm; (AM 106 Delvaux et al., AM 107 Viegas)~~
- ~~(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; (AM 108 Delvaux et al., AM 108 Viegas)~~

~~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. (AM 111 Delvaux et al.)~~

*Article 30*  
*Variable remuneration*

1. Member States shall ensure that any variable remuneration awarded and paid by an investment firm **to those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that falls within the remuneration bracket of senior management and risk takers whose professional activities have a material impact on the risk profiles of the firm or of the assets that it manages** (AM 113 Giegold,) complies with all of the following requirements:
  - (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;
  - (b) when assessing the performance of the individual, both financial and non-financial criteria shall be taken into account;
  - (c) the assessment of the performance referred to in point (a) shall be based on a multi-year period, taking into account the business cycle of the investment firm and its business risks;
  - (d) the variable remuneration shall not affect the investment firm's ability to ensure a sound capital base;
  - (e) there shall be no guaranteed variable remuneration other than for new staff and only for the first year of employment of new staff;
  - (f) payments relating to the early termination of an employment contract shall reflect performance achieved over time by the individual and shall not reward failure or misconduct;
  - (g) remuneration packages relating to compensation or buy out from contracts in previous employment shall be aligned with the long-term interests of the investment firm;

- (h) the measurement of performance used as a basis to calculate pools of variable remuneration shall take into account all types of current and future risks and the cost of the capital and liquidity required in accordance with Regulation (EU) - --/---[IFR];
  - (i) the allocation of the variable remuneration components within the investment firm shall take into account all types of current and future risks;
  - (j) at least ~~50%~~ **40%** (*AM 10 Rapporteur and AM 118 Torvalds*) of the variable remuneration shall consist of any of the following instruments:
    - (1) shares, or subject to the legal structure of the investment firm concerned, equivalent ownership interests;
    - (2) share-linked instruments, or subject to the legal structure of the investment firm concerned, equivalent non-cash instruments;
    - (3) additional Tier 1 instruments or Tier 2 instruments or other instruments which can be fully converted to Common Equity Tier 1 instruments or written down and that adequately reflect the credit quality of the investment firm as a going concern;
  - (ja) by way of derogation from point (j), where an investment firm does not issue any of the instruments referred to in that point, national competent authorities may approve the use of alternative arrangements fulfilling the same objectives; (AM 121 Delvaux)***
  - (k) at least ~~40%~~ **50%** (*AM 123 Delvaux, this is a compromise between the COM text and AM 122 Tang, AM 124 Giegold*) 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%;
  - (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:
    - (i) participated in or was responsible for conduct which resulted in significant losses for the investment firm;
    - (ii) is no longer considered fit and proper;
  - (m) discretionary pension benefits shall be in line with the business strategy, objectives, values and long-term interests of the investment firm.
2. For the purposes of paragraph 1, competent authorities shall ensure the following:
- (a) individuals referred to in Article 28(1) shall not use personal hedging strategies or remuneration and liability-related insurances to undermine the principles referred to in paragraph 1;
  - (b) variable remuneration shall not be paid through financial vehicles or methods that facilitate the non-compliance with this Directive or Regulation (EU) ---/---[IFR].

3. For the purposes of point (j) of paragraph 1, the instruments referred to therein shall be subject to an appropriate retention policy designed to align the incentives of the individual with the longer-term interests of the investment firm, its creditors and clients. Member States or their competent authorities may place restrictions on the types and designs of those instruments or prohibit the use of certain instruments for variable remuneration.

For the purposes of point (k) of paragraph 1, the deferral of the variable remuneration shall vest no faster than on a pro-rata basis.

For the purposes of point (m) of paragraph 1, where an employee leaves the investment firm before retirement age, discretionary pension benefits shall be held by the investment firm for a period of five years in the form of instruments referred to in point (j). Where an employee reaches retirement age, discretionary pension benefits shall be paid to the employee in the form of instruments referred to in point (j), subject to a five-year retention period by that employee.

4. Points (j) and (k) of paragraph 1 and the third subparagraph of paragraph 3 shall not apply to:
- (a) an investment firm, the ~~asset~~ value **of on- and off-balance sheet assets** (*AM 125 Giegold*) of which is on average equal to or less than EUR 100 million over the four-year period immediately preceding the given financial year;
  - (b) an individual whose annual variable remuneration does not exceed EUR 50 000 and does not represent more than one fourth of this individual's total annual remuneration.

By way of derogation from point (a), competent authorities may decide that investment firms with asset values below the threshold referred to in point (a) are not subject to the derogation because of the nature and scope of their activities, their internal organisation, or, where applicable, the characteristics of the group to which they belong.

By way of derogation from point (b), competent authorities may decide that individuals whose annual variable remuneration is below the thresholds referred to in point (b) are not subject to the derogation because of national market specificities in terms of remuneration practices or because of the nature of the responsibilities and job profile of those individuals.

5. Member States shall require investment firms to apply the provisions laid down in this Article to remuneration awarded for services provided or performance following the financial year of the assessment referred to in Article 23(1).
6. EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify the classes of instruments that satisfy the conditions set out in paragraph 1(j)(3).

EBA shall submit those draft regulatory technical standards to the Commission by *[nine months from the date of entry into force of this Directive]*.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Article 10 to 14 of Regulation (EU) No 1093/2010.

7. ~~EBA, in consultation with ESMA, shall adopt guidelines facilitating the implementation of paragraph 4 and ensuring its consistent application. (AM 129 by the Rapporteur)~~

*Article 31  
Remuneration committee*

1. Member States shall ensure that ~~competent authorities have the necessary powers to guarantee that~~ investment firms **which do not meet the criteria defined in Article 30(4) a** ~~which are determined as significant in accordance with Article 26(4)~~ (in parts AM 11 by the Rapporteur, redrafted in accordance with the agreement in the shadows' meeting on 4 September 2018 and with AM 133 Delvaux) establish a remuneration committee. That remuneration committee **shall be gender balanced** and 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.** (AM 133 Delvaux)
2. Member States shall ensure that ~~competent authorities have the necessary powers to guarantee that~~ (redrafted in accordance to the agreement in the shadows' meeting on 4 September 2018) 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.
3. When preparing the decisions referred to in paragraph 2, the remuneration committee shall take into account the public interest and the long-term interests of shareholders, investors and other stakeholders in the investment firm.

*Article 32 (unchanged COM text)  
Oversight of remuneration policies*

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.
2. EBA shall use the information received from the competent authorities in accordance with paragraph 1 to benchmark remuneration trends and practices at Union level.
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/EC<sup>2</sup>.

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.

*Note: this compromise should be seen in conjunction with Compromise IA regarding environmental, social, or governance (ESG) risks, and with Compromise P on the review clause regarding ESG risks (Article 60, paragraph 1, point aa (new))*

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<sup>2</sup> 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).



## DRAFT COMPROMISE IA (new)

### ESG Factors

*Bold/italics* text represents changes to the Commission proposal.

*Article 32a (new, adapted from ECON Final Report (CRD V), Article 98(7c))*

*The EBA shall investigate on the introduction of technical criteria related to exposures to activities associated substantially with environmental, social, and governance objectives (ESG) for the supervisory review and evaluation process of risks; with a view to assess possible sources and effects of such risks on investment firms, taking into account the ESG taxonomy [add reference to legal text when available].*

*For the purpose of the first subparagraph, the EBA report shall comprise at least the following:*

- (a) the definition of ESG-related risks, physical risks, and transition risks; including risks related to the depreciation of assets due to regulatory change, qualitative and quantitative criteria and metrics relevant for assessing such risks, as well as a methodology for assessing whether such risks may arise in the short, medium, or long term and could have a material financial impact on an investment firm;*
- (b) an assessment whether significant concentrations of specific assets might increase ESG-related risks, physical risks, and transition risks for an investment firm;*
- (c) the description of the processes which an investment firm may use to identify, assess, and manage ESG-related risks, physical risks and transition risks;*
- (d) the criteria, parameters and metrics which supervisors and institutions may use to assess the impact of short, medium and long term ESG-related risks for the purposes of the supervisory review and evaluation process.*

*The EBA shall submit a report on its findings to the European Parliament, the Council, and the Commission, by [two years after the date of entry into force of this Directive].*

*On the basis of this report, the EBA may, if appropriate, adopt guidelines to introduce criteria related to ESG-related risks for the supervisory review and evaluation process which take into account the findings of the EBA report referred to in this Article.*

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## DRAFT COMPROMISE J

### Title IV Chapter II Section 3 (Articles 33, 34): Supervisory review and evaluation process (SREP)

*Bold/italics* text represents changes to the Commission proposal.

#### COVERING AMs 142-153, JURI 46

##### *Article 33 Supervisory review and evaluation*

1. Competent authorities shall review the arrangements, strategies, processes and mechanisms implemented by investment firms to comply with this Directive and [Regulation (EU) ---/---[IFR] and evaluate all of the following to ensure a sound management and coverage of their risks:
  - (a) the risks referred to in Article 27;
  - (b) the geographical location of an investment firm's exposures;
  - (c) the business model of the investment firm;
  - (d) the assessment of systemic risk, taking into account the identification and measurement of systemic risk under Article 23 of Regulation (EU) No 1093/2010 or recommendations of the ESRB;
  - (da) the risks posed to the security of network and information systems that investment firms use in their operations to ensure confidentiality, integrity and availability of their processes and data. (AM 145 von Weizsäcker and Delvaux)***
  - (e) the exposure of investment firms to the interest rate risk arising from non-trading book activities;
  - (f) governance arrangements of investment firms and the ability of members of the management body to perform their duties.
2. Member States shall ensure that competent authorities establish the frequency and intensity of the review and evaluation referred to in paragraph 1 having regard to the size, systemic importance, nature, scale and complexity of the activities of the investment firms concerned and taking into account the principle of proportionality.  
***Competent authorities shall perform the review referred to in paragraph 1 with respect to firms meeting the conditions set out in Article 12(1) of [Regulation (EU) ---/---[IFR] only where they decide that such review is required by the size, systemic importance, nature, scale and complexity of the activities of these firms. (AM 148 by the Rapporteur)***
3. Member States shall ensure that, where a review shows that an investment firm may pose systemic risk as referred to in Article 23 of Regulation (EU) No 1093/2010, competent authorities inform EBA without delay about the results of that review.
4. Competent authorities shall take appropriate action where the review and evaluation referred to in point (e) of paragraph 1 has shown that the economic value of equity of

an investment firm has declined by more than 15 % of its Tier 1 capital as a result of a sudden and unexpected change in interest rates as set out in any of the six supervisory shock scenarios applied to interest rates, as specified in the [Commission Delegated Regulation adopted pursuant to Article 98 (5) of Directive 2013/36/EU].

5. When conducting the review and evaluation referred to in point (f) of paragraph 1, competent authorities shall have access to agendas, minutes and supporting documents for meetings of the management body and its committees, and the results of the internal or external evaluation of performance of the management body.
6. The Commission shall be empowered to adopt delegated acts in accordance with Article 54 to further specify details to ensure that the arrangements, strategies, processes and mechanisms of investment firms ensure a sound management and coverage of their risks. The Commission shall thereby take into account developments in financial markets, and in particular the emergence of new financial products, developments in accounting standards and developments that facilitate the convergence of supervisory practices.

#### *Article 34*

##### *Ongoing review of the permission to use internal models*

1. Member States shall ensure that competent authorities review on a regular basis, and at least every 3 years, investment firms' compliance with the requirements for the permission to use internal models as referred to in Article 22 of [Regulation (EU) ---/---]. Competent authorities shall in particular have regard to changes in an investment firm's business and to the implementation of those models to new products, and review and assess whether the investment firm uses well developed and up-to-date techniques and practices for those models. Competent authorities shall ensure that material deficiencies identified in the coverage of risk by an investment firm's internal models are rectified, or take steps to mitigate their consequences, including by imposing capital add-ons or higher multiplication factors.
2. Where, for internal risk-to-market models, numerous overshootings as referred to in Article 366 of Regulation (EU) No 575/2013 indicate that the models are not or are no longer accurate, competent authorities shall revoke the permission to use the internal models or impose appropriate measures to ensure that the models are improved promptly *and within a set timeframe*. (AM 153 Giegold)
3. Where an investment firm that has been granted permission to use internal models no longer meets the requirements for applying those models, competent authorities shall require either demonstration that the effect of non-compliance is immaterial or presentation of a plan and a deadline to comply with those requirements. Competent authorities shall require improvements to the presented plan where that plan is unlikely to result in full compliance or where the deadline is inappropriate.

Where it is unlikely that the investment firm shall comply by the prescribed deadline or has not satisfactorily demonstrated that the effect of non-compliance is immaterial, Member States shall ensure that competent authorities revoke the permission to use internal models or limit it to compliant areas or to those areas where compliance can be achieved by an appropriate deadline.

4. EBA shall analyse internal models across investment firms and shall analyse how investment firms using internal models treat similar risks or exposures.

In order to promote consistent, efficient and effective supervisory practices, EBA shall, on the basis of that analysis and in accordance with Article 16 of Regulation (EU) No 1093/2010, develop guidelines with benchmarks on how investment firms should use internal models and how those internal models should treat similar risks or exposures.

Member States shall encourage competent authorities to take into account that analysis and those guidelines for the review referred to in paragraph 1.

*Note: this compromise should be seen in conjunction with Compromise IA regarding environmental, social, or governance (ESG) risks, and with Compromise P on the review clause regarding ESG risks (Article 60, paragraph 1, point aa (new))*

## DRAFT COMPROMISE K

### Articles 35, 36: Supervisory measures, supervisory powers

***Bold/italics*** text represents changes to the Commission proposal.

#### COVERING AMs 154/155, 157-162, JURI47/48

##### *Article 35* *Supervisory measures*

Competent authorities shall require investment firms to take, at an early stage, the measures necessary to address the following problems:

- (a) the investment firm does not meet the requirements of this Directive or of [Regulation (EU) ---/---[IFR];
- (b) competent authorities have evidence that the investment firm is likely to breach [Regulation (EU) ---/---[IFR] or the provisions transposing this Directive within the next 12 months.

~~***(ba) In case the total value of the assets of an undertaking is below EUR 30 billion and the undertaking is part of a third-country global systemically important institution (G-SII), the supervisory responsibility for that undertaking shall be transferred from the national competent authority to the SSM. (AM 154 by the Rapporteur)***~~

##### *Article 36* *Supervisory powers*

1. Member States shall ensure that competent authorities have the necessary supervisory powers to intervene in the exercise of their functions into the activity of investment firms ***in a proportionate way.*** (AM 155 by the Rapporteur)
2. For the purposes of Article 33, Article 34(3) and Article 35 and of the application of [Regulation (EU)---/---[IFR], competent authorities shall have the following powers:
  - (a) to require investment firms to have additional capital in excess of the requirements set out in Article 11 of [Regulation (EU) ---/---[IFR], under the conditions laid down in Article 37 of this Directive, or to adjust the capital required in case of material changes in the business of those investment firms;
  - (b) to require the reinforcement of the arrangements, processes, mechanisms and strategies implemented in accordance with Articles 22 and 24;
  - (c) to require investment firms to present a plan to comply with supervisory requirements pursuant to this Directive and to [Regulation (EU) ---/---[IFR], to set a deadline ***which shall not exceed one year*** (AM 157 Giegold) for the

**Kommentiert [BF5]:** Deleted as the legal vehicle to confer tasks to the ECB is SSM regulation, whose legal basis is different from this directive and requires unanimity. Substantive concern is partially taken over in Compromise A (new Article 4a).

implementation of that plan and require improvements to that plan regarding scope and deadline;

- (d) to require investment firms to apply a specific provisioning policy or treatment of assets in terms of capital requirements;
- (e) to restrict or limit the business, operations or network of investment firms or to request the divestment of activities that pose excessive risks to the financial soundness of an investment firm;
- (f) to require the reduction of the risk inherent in the activities, products and systems of investment firms, including outsourced activities;
- (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;
- (h) to require investment firms to use net profits to strengthen own funds;
- (i) to restrict or prohibit distributions or interest payments by an investment firm to shareholders, members or holders of Additional Tier 1 instruments where that prohibition does not constitute an event of default of the investment firm;
- (j) to impose additional or more frequent reporting requirements to those set out in this Directive and [Regulation (EU) ---/---[IFR], including reporting on capital and liquidity positions;
- (k) to impose specific liquidity requirements;
- (l) to require additional disclosures ~~on an ad-hoc basis~~. (AM 159 Giegold)
- (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. (AM 160 Delvaux)**

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).
- (ba) the additional information is required for the duration of the institution's supervisory review and evaluation process as referred to in Article 33. (AM 161 Giegold)**

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.

## DRAFT COMPROMISE L

### Articles 37, 38: Additional capital requirements and Guidance on capital adequacy

***Bold/italics*** text represents changes to the Commission proposal.

#### COVERING AMs 163-178, JURI 49

##### Article 37

##### *Additional capital requirement*

1. Competent authorities shall impose the additional capital requirement referred to in Article 36(2)(a) only where, on the basis of the reviews carried out in accordance with Articles 35 and 36, they conclude that an investment firm is in one of the following situations:
  - (a) the investment firm is exposed to risks or elements of risks that are not **sufficiently covered by one of the K-factors set out in [Regulation (EU) ---/---[IFR]** covered or not sufficiently covered by the capital requirement set out in Part Three of [Regulation (EU) ---/--- [IFR]; (AM 167 by the Rapporteur)
  - (b) the investment firm does not meet the requirements set out in Articles 22 and 24 and other administrative measures are unlikely to sufficiently improve the arrangements, processes, mechanisms and strategies within an appropriate timeframe;
  - (c) the prudential valuation of the trading book is insufficient to enable the investment firm to sell or hedge out its positions within a short period without incurring material losses under normal market conditions;
  - (d) the evaluation carried out in accordance with Article 34 shows that noncompliance with the requirements for the application of the permitted internal models will likely lead to inadequate levels of capital;
  - (e) the investment firm repeatedly fails to establish or maintain an adequate level of additional capital as set out in Article 38(1).

~~2. For the purpose of paragraph 1(a), risks or elements of risk shall only be considered as not covered or not sufficiently covered by the capital requirement set out in Part Three of [Regulation (EU) ---/--- [IFR] where the amounts, types of risk are not already covered by one of the k-factors as and distribution of capital considered adequate by the competent authority following the supervisory review of the assessment carried out by investment firms in accordance with Article 22(1) are higher than the investment firm's capital requirement set out in Part Three of [Regulation (EU) ---/--- [IFR].~~

~~For the purpose of the first subparagraph, the capital considered adequate covers all material risks or elements of such risks that are not subject to a specific capital requirement. This may include risks or elements of risks that are explicitly excluded~~

from the capital requirement set out in Part Three of [Regulation (EU) / IFR] (AM 169 by the Rapporteur, AM 170 Giegold)

~~2.3. Competent authorities shall determine the level of the additional capital required pursuant to Article 36(2)(a) as the difference between the capital considered adequate pursuant paragraph 2 of this Article and the capital requirement set out in Part Three of [Regulation (EU) / IFR].~~

2.4. Competent authorities shall require investment firms to meet the additional capital requirement referred to in Article 36(2)(a) with own funds subject to the following conditions:

- (a) at least three quarters of the additional capital requirement shall be met with Tier 1 capital;
- (b) at least three quarters of the Tier 1 capital shall be composed of CET 1 capital;
- (c) those own funds shall not be used to meet any of the capital requirements set out in points (a), (b) and (c) of Article 11 of [Regulation (EU) / IFR].

3.5. Competent authorities shall substantiate in writing their decision to impose an additional capital requirement as referred to in Article 36(2)(a) by giving a clear account of the full assessment of the elements referred to in paragraphs 1 to 3.4 of this Article. That includes, in the case set out in paragraph 1(d) of this Article, a specific statement of why the level of capital established in accordance with Article 38(1) is no longer considered sufficient.

4.6. EBA, in consultation with ESMA, shall develop draft regulatory technical standards to:

**(a) define the risks and elements of risks that shall be considered as not covered by the K-factors and for those risks and elements of risk define indicative quantitative metrics and qualitative risk assessments to be used by competent authorities set out in [Regulation (EU) / IFR]**

**(b) define the notion of “not sufficiently covered” as referred in point (a) of paragraph 1.**

**(c) define in which cases the competent authorities are allowed to impose additional capital required where the amounts, types and distribution of capital considered adequate are higher than the investment firm's capital requirement set out in Part Three of [Regulation (EU) / IFR].**

**(d) define maximum amounts of additional capital that could be imposed on investments firms.**

EBA shall ensure that the draft regulatory technical standards are proportionate in light of:

- (i) the implementation burden on investment firms and competent authorities;
- (ii) the possibility that the higher level of capital requirements that apply where investment firms do not use internal models may justify the imposition of lower capital requirements when assessing risks and elements of risks in accordance with paragraph 2.

**Kommentiert [BF6]:** As a consequence of the deletion of paragraph 2 - EBA empowerment inserted in paragraph



EBA shall submit those draft regulatory technical standards to the Commission by [nine months from the date of entry into force of this Directive].

Power is conferred on the Commission to adopt the regulatory technical standards in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

*Article 38  
Guidance on capital adequacy*

1. Competent authorities shall ensure that investment firms have a level of capital that, based on Article 22, is sufficiently above the requirements set out in Part Three of [Regulation (EU) --/--[IFR] and in this Directive, including the additional capital requirements referred to in Article 36(2)(a), to ensure that:
  - (a) cyclical economic fluctuations do not lead to a breach of those requirements;
  - (b) the investment firm's capital can absorb the potential losses and risks identified pursuant to supervisory review processes.
2. Competent authorities shall regularly review the level of capital that has been set by each investment firm in accordance with paragraph 1 and, where relevant, communicate the conclusions of that review to the investment firm concerned, including any expectation for adjustments to the level of capital established in accordance with paragraph 1. ***Such a communication shall include the date by which the competent authority requires the adjustment to be completed.*** (AM 176 Giegold)

Recital 19 is amended as follows:

- (19) Supervisory review and evaluation powers should continue to remain an important regulatory tool allowing competent authorities to assess qualitative elements, including internal governance and controls, risk management processes and procedures and, where needed, to set additional requirements, including in particular in relation to capital and liquidity requirements. ***Competent authorities shall set additional capital requirements only for those risks which are not ~~already~~ covered or sufficiently covered by k-factors as set out in Part Three of [Regulation (EU) ---/--[IFR]. It is clarified that the provisions regarding additional capital requirements referred to in Article 37 (2) only apply to firms which do not meet the criteria defined in Article 12 of [Regulation (EU) ---/--[IFR].***

## DRAFT COMPROMISE M

### Article 51: Assessment of third countries' supervision and other supervisory techniques

*Bold/italics* text represents changes to the Commission proposal.

#### COVERING AMs 185-190

##### *Article 51 (unchanged COM text)*

##### *Assessment of third countries' supervision and other supervisory techniques*

1. Member States shall ensure that where an investment firm, the parent undertaking of which has its head office in a third country, is not subject to effective supervision at group level, the competent authorities assess whether the investment firm is subject to supervision by the third-country supervisory authority which is equivalent to the supervision set out in this Directive and in Part One of [Regulation (EU) ---/---[IFR].
2. Where the assessment referred to in paragraph 1 concludes that no such equivalent supervision applies, Member States shall apply the provisions set out in this Directive and [Regulation (EU) ---/---[IFR] to the investment firm or shall allow for appropriate supervisory techniques which achieve the objectives of supervision regarding compliance with the group capital test set out in [Regulation (EU) ---/---[IFR]. Those supervisory techniques shall be decided by the competent authority which would be the group supervisor had the parent undertaking been established in the Union, after consultation with the other competent authorities involved. Any measures taken pursuant to this paragraph shall be notified to the other competent authorities involved, to EBA and to the Commission.
3. The competent authority which would be the group supervisor had the parent undertaking been established in the Union may, in particular, require the establishment of an investment holding company or mixed financial holding company in the Union and apply Article 7 of [Regulation (EU) ---/---[IFR] to that investment holding company or that mixed financial holding company.

**DRAFT COMPROMISE N**

Article 57: Amendments to Directive 2013/36/EU

***Bold/italics*** text represents changes to the Commission proposal, or, where applicable, to the original text of Directive 2013/36/EU.

**COVERING AMs 12-13, 191-195**

*Article 57  
Amendments to Directive 2013/36/EU*

Directive 2013/36/EU is amended as follows:

- (1) in the title, the words ‘and investment firms’ are deleted;
- (2) Article 1 is replaced by the following:

*“Article 1  
Subject matter*

This Directive lays down rules concerning:

- (a) access to the activity of credit institutions;
  - (b) supervisory powers and tools for the prudential supervision of credit institutions by competent authorities;
  - (c) the prudential supervision of credit institutions by competent authorities in a manner that is consistent with the rules set out in Regulation (EU) No 575/2013;
  - (d) publication requirements for competent authorities in the field of prudential regulation and supervision of credit institutions.”;
- (3) Article 2 is amended as follows:
    - (a) paragraph 1 is replaced by the following:

“1. This Directive shall apply to credit institutions.”;
    - (b) paragraphs 2 and 3 are deleted;
    - (c) in paragraph 5, point (1) is deleted;
    - (d) paragraph 6 is replaced by the following:

“6. The entities referred to in points (3) to (24) of paragraph 5 and in the delegated acts adopted in accordance with paragraphs 5a and 5b of this Article shall be treated as financial institutions for the purposes of Article 34 and Title VII, Chapter 3.”;
  - (4) Article 3(1) is amended as follows:
    - (a) point (3) is replaced by the following:

“(3) ‘institution’ means institution as referred to in Article 4(1)(3) of Regulation (EU) ---/---\*[IFR].”;

(b) point (4) is deleted;

(5) Article 5 is replaced by the following:

*“Article 5  
Coordination within Member States*

Member States that have more than one competent authority for the prudential supervision of credit institutions and financial institutions shall take the requisite measures to organise coordination between those authorities.”;

(6) the following Article 8a is inserted:

*“Article 8a  
Specific requirements for authorisation of credit institutions referred to in  
Article 4(1)(1)(b) of Regulation (EU) No 575/2013*

1. Member States shall require the undertakings referred to in Article 4(1)(1)(b) of Regulation (EU) No 575/2013 which have already obtained an authorisation pursuant to Title II of Directive 2014/65/EU to submit an application for authorisation in accordance with Article 8, at the latest on the following dates:

- (a) when the average of monthly total assets, calculated over a period of twelve consecutive months, exceeds EUR 30 billion; or
- (b) when the average of monthly total assets calculated over a period of twelve consecutive months is below EUR 30 billion, and the undertaking is part of a group in which the combined value of the total assets of all undertakings in the group that carry out any of the activities referred to in points (3) and (6) of Section A of Annex I of Directive 2014/65/EU and have total assets below EUR 30 billion, calculated as an average over a period of twelve consecutive months, exceeds EUR 30 billion.

2. The undertakings referred to in paragraph 1 may continue carrying out the activities referred to in Article 4(1)(1)(b) of Regulation (EU) No 575/2013 until they obtain the authorisation referred to in that paragraph.

3. By way of derogation from paragraph 1, undertakings referred to in Article 4(1)(1)(b) of Regulation (EU) No 575/2013 that on [date of entry into force of Directive (EU) ---/---[IFD] - 1 day] are carrying out activities as investment firms authorised under Directive 2014/65/EU, shall apply for authorisation in accordance with Article 8 within [1 year + 1 day after entry into force of Directive (EU) ---/---[IFD].

4. Where the competent authority, after receiving the information in accordance with Article [95a] of Directive 2014/65/EU, determines that an undertaking is to be authorised as a credit institution in accordance with Article 8 of this Directive, it shall notify the undertaking and the competent authority as defined in Article 4(1)(26) of Directive 2014/65/EU and shall take over the authorisation procedure from the date of that notification.

**4a. In case of re-authorisation, EBA shall ensure that the process is as streamlined as possible and that information from existing authorisations is taken into account. (AM 195 by the Rapporteur)**

5. EBA shall develop draft regulatory technical standards to specify:

- (a) the information to be provided by the undertaking to the competent authorities in the application for the authorisation, including the programme of operations provided for in Article 10;
- (b) the methodology for calculating the thresholds referred to in paragraph 1.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in points (a) and (b) in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

EBA shall submit those draft technical standards to the Commission by [*1<sup>st</sup> January 2019*].

(7) in Article 18 the following point (aa) is inserted:

"(aa) uses its authorisation exclusively to engage in the activities referred to in Article 4(1)(1)(b) of Regulation (EU) No 575/2013 and has for a period of 5 consecutive years average total assets below the thresholds set out in that Article;"

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

"2. EBA shall publish on its website, and shall update ~~regularly~~ **at least annually**, a list of the names of all credit institutions that have been granted authorisation." (AM 12 by the Rapporteur)

**(7b) in Article 20, the following paragraph 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."** (AM 13 by the Rapporteur)

(8) Title IV is deleted;

(9) in Article 51(1), the first subparagraph is replaced by the following:

"The competent authorities of a host Member State may request the consolidating supervisor, where Article 112(1) applies, or the competent authorities of the home Member State, that a branch of a credit institution shall be considered as significant.";

(10) in Article 53, paragraph 2 is replaced by the following:

"2. Paragraph 1 shall not prevent the competent authorities from exchanging information with each other or transmitting information to the ESRB, EBA, or the European Supervisory Authority (European Securities and Markets Authority) ("ESMA") established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council\* in accordance with this Directive, with Regulation (EU) No 575/2013, with [*Directive (EU) ---/---[IFD] on the prudential supervision of investment firms*], with other Directives applicable to credit

institutions, with Article 15 of Regulation (EU) No 1092/2010, with Articles 31, 35 and 36 of Regulation (EU) No 1093/2010 and with Articles 31 and 36 of Regulation (EU) No 1095/2010. That information shall be subject to paragraph 1.”;

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\* Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

(11) in Article 66(1), the following point (aa) is inserted:

“(aa) carrying out at least one of the activities referred to in Article 4(1)(1)(b) of Regulation (EU) No 575/2013 and exceeding the threshold indicated in that Article without being authorised as a credit institution.”;

(12) in Article 76(5), the last sentence is deleted.

(13) in Article 86, paragraph 11 is replaced by the following:

“11. Competent authorities shall ensure that institutions have in place liquidity recovery plans setting out adequate strategies and proper implementation measures to address possible liquidity shortfalls, including in relation to branches established in another Member State. Competent authorities shall ensure that those plans are tested by the institutions at least annually, updated on the basis of the outcome of the alternative scenarios set out in paragraph 8, reported to and approved by senior management, so that internal policies and processes can be adjusted accordingly. Institutions shall take the necessary operational steps in advance to ensure that liquidity recovery plans can be implemented immediately. Those operational steps shall include holding collateral immediately available for central bank funding. This includes holding collateral in the currency of another Member State where necessary, or the currency of a third country to which the credit institution has exposures, and where operationally necessary within the territory of a host Member State or of a third country to whose currency it is exposed.”;

(14) in Article 110, paragraph 2 is deleted;

(15) in Article 114, paragraph 1 is replaced by the following:

“1. Where an emergency situation arises, including a situation as described in Article 18 of Regulation (EU) No 1093/2010 or a situation of 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 a group have been authorised or where significant branches as referred to in Article 51 are established, the consolidating supervisor shall, subject to Chapter 1, Section 2, and where applicable Section 2 of Chapter I of Title IV of [Directive (EU) ---/---[IFD] of the European Parliament and of the Council]\*, alert as soon as is practicable, EBA and the authorities referred to in Article 58(4) and Article 59 and shall communicate all information essential for the pursuance of their tasks. Those obligations shall apply to all competent authorities.

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\* [Directive (EU) ---/--- of the European Parliament and of the Council of ..... on .....];”

(16) Article 116 is amended as follows:

(a) paragraph 2 is replaced by the following:

2. The competent authorities participating in the colleges of supervisors and EBA shall cooperate closely. The confidentiality requirements under Title VII, Chapter 1, Section II of this Directive, and, where applicable, Section 2 of Chapter I of Title IV of [Directive (EU) ---/---[IFD]] shall not prevent the competent authorities from exchanging confidential information within colleges of supervisors. The establishment and functioning of colleges of supervisors shall not affect the rights and responsibilities of the competent authorities under this Directive and under Regulation (EU) No 575/2013.”;

(b) paragraph 6 is replaced by the following:

“6. The competent authorities responsible for the supervision of subsidiaries of an EU parent institution or an EU parent financial holding company or EU parent mixed financial holding company and the competent authorities of a host Member State where significant branches as referred to in Article 51 are established, ESCB central banks as appropriate, and third countries' supervisory authorities where appropriate and subject to confidentiality requirements that are equivalent, in the opinion of all competent authorities, to the requirements under Title VII, Chapter 1, Section II of this Directive and, where applicable, under Section 2 of Chapter I of Title IV of [Directive (EU) ---/---[IFD]] Directive 20xx/xx/EU may participate in colleges of supervisors.”;

(c) paragraph 9 is replaced by the following:

“9. The consolidating supervisor, subject to the confidentiality requirements under Title VII, Chapter 1, Section II, of this Directive, and where applicable, under Section 2 of Chapter I of Title IV of [Directive (EU) ---/---[IFD]], shall inform EBA of the activities of the college of supervisors, including in emergency situations, and communicate to EBA all information that is of particular relevance for the purposes of supervisory convergence.”;

(17) in Article 125, paragraph 2 is replaced by the following:

“2. Information received, within the framework of supervision on a consolidated basis, and in particular any exchange of information between competent authorities which is provided for in this Directive, shall be subject to professional secrecy requirements at least equivalent to those referred to in Article 53(1) of this Directive for credit institutions or under Article 13 of [Directive (EU) ---/---[IFD]].”;

(18) in Article 128, the second subparagraph is deleted;

(19) in Article 129, paragraphs 2, 3 and 4 are deleted;

(20) in Article 130, paragraphs 2, 3 and 4 are deleted;

(21) in Article 143(1), point (d) is replaced by the following:

“(d) without prejudice to the provisions set out in Title VII, Chapter 1, Section II of this Directive and where applicable, the provisions set out in Title IV,

Chapter 1, Section 2 of [*Directive (EU) 2013/36/IFD*], aggregate statistical data on key aspects of the implementation of the prudential framework in each Member State, including the number and nature of supervisory measures taken in accordance with Article 102(1)(a) and of administrative penalties imposed in accordance with Article 65.”;



**DRAFT COMPROMISE O**

Article 58, 58a (new): Amendments to Directive 2014/65/EU

***Bold/italics*** text represents changes to the Commission proposal, or, where applicable, to the original text of Directive 2014/65/EU.

**COVERING AMs 196-200, JURI52**

*Article 58 (unchanged COM text)  
Amendments to Directive 2014/65/EU*

Directive 2014/65/EU is amended as follows:

- (1) in Article 8, point (a) is replaced by the following:
- “(a) no longer meets the conditions under which authorisation was granted, such as compliance with the conditions set out in [Regulation (EU) ---/--- [IFR];”;

- (2) Article 15 is replaced by the following:

*“Article 15  
Initial capital endowment*

“Member States shall ensure that the competent authorities do not grant authorisation unless the investment firm has sufficient initial capital in accordance with the requirements of Article 8 of [*Directive (EU) ---/---[IFD]*], having regard to the nature of the investment service or activity in question.”;

- (3) Article 41 is replaced by the following:

*Article 41  
Granting of the authorisation*

“1. The competent authority of the Member State where the third-country firm has established or intends to establish its branch shall only grant authorisation where the competent authority is satisfied that:

- (a) the conditions under Article 39 are fulfilled; and  
(b) the branch of the third-country firm will be able to comply with the provisions referred to in paragraphs 2 and 3.

The competent authority shall inform the third-country firm, within six months of submission of a complete application, whether or not the authorisation has been granted.

2. The branch of the third-country firm authorised in accordance with paragraph 1, shall comply with the obligations laid down in Articles 16 to 20, 23, 24, 25 and 27,

Article 28(1), and Articles 30, 31 and 32 of this Directive and in Articles 3 to 26 of Regulation (EU) No 600/2014 and the measures adopted pursuant thereto and shall be subject to the supervision of the competent authority in the Member State where the authorisation was granted.

Member States shall not impose any additional requirements on the organisation and operation of the branch in respect of the matters covered by this Directive and shall not treat any branch of third-country firms more favourably than Union firms.

Member States shall ensure that competent authorities notify ESMA on an annual basis of the number of branches of third-country firms active on their territory.

3. The branch of the third-country firm that is authorised in accordance with paragraph 1 shall report to the competent authority referred to in paragraph 2 the following information on an annual basis:

- (a) the scale and scope of the services and activities of carried out by the branch in that Member State;
- (b) the turnover and the aggregated value of the assets corresponding to the services and activities referred to in point (a);
- (c) a detailed description of the investor protection arrangements available to the clients of the branch, including the rights of those clients resulting from the investor-compensation scheme referred to in Article 39(2)(f);
- (d) their risk management policy and arrangements applied by the branch for the services and activities referred to in point (a).

4. The competent authorities referred to in paragraph 2, the competent authorities of entities that are part of the same group to which branches of third-country firms authorised in accordance with paragraph 1 belong, and ESMA and EBA shall cooperate closely to ensure that all activities of that group in the Union are subject to comprehensive, consistent and effective supervision in accordance with this Directive, Regulation 600/2014, Directive 2013/36/EU, Regulation (EU) No 575/2013, Directive [Directive (EU) ---/---\* [IFD], and Regulation [Regulation (EU) ---/---\* [IFR].

5. ESMA shall develop draft regulatory technical standards to further specify the information referred to in paragraph 3.

ESMA shall submit those draft regulatory technical standards to the Commission by [date to be inserted].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010’.

6. ESMA shall develop draft implementing technical standards to specify the format in which the information referred to in paragraph 3 is to be reported to the national competent authorities.

ESMA shall submit those draft implementing technical standards to the Commission by [date to be inserted].

Power is delegated to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’.

(4) in Article 81(3), point (a) is replaced by the following:

“(a) to check that the conditions governing the taking-up of the business of investment firms are met and to facilitate the monitoring of the conduct of that business, administrative and accounting procedures and internal-control mechanisms;”;

(5) the following Article 95a is inserted:

*“Article 95a*

*Transitional provision on the authorisation of credit institution referred to in Article 4(1)(1)(b) of Regulation (EU) No 575/2013*

Competent authorities shall inform the competent authority referred to in Article 8 of Directive 2013/36/EU where the envisaged total assets of an undertaking which has applied for authorisation pursuant to Title II of this Directive before [date of entry into force of Directive (EU) ---/--- [IFD]] in order to carry out the activities referred to in points (3) and (6) of Section A of Annex I exceeds EUR 30 billion, and notify the applicant thereof.”.

*Article 58a (new)*

*Amendment to Directive 2014/59/EU*

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 ~~28(2)~~ 8(1) of ~~Directive 2013/36/EU~~ [Directive (EU) ---/--- [IFD]],” (AM 200 Delvaux)

**DRAFT COMPROMISE P**

Article 60: Review clause

*Bold/italics* text represents changes to the Commission proposal.

**COVERING AMs 201-205, JURI53**

*Article 60  
Review*

By [*three years after the date of application of this Directive and Regulation (EU) ---/--- [IFR]*] the Commission, in close cooperation with EBA and ESMA, shall submit a report, together with a legislative proposal if appropriate, to the European Parliament and to the Council, on the following:

- (a) the provisions on remuneration in this Directive and in Regulation (EU) ---/--- [IFR] ***as well as in UCITS and AIFMD with the aim of achieving a level playing field for all investment firms active in the Union; (AM 202 Giegold);***
- (aa) ***an assessment on***
  - i) whether any environmental, social, or governance (ESG) risks shall be considered for an investment firm's internal governance;*
  - ii) whether any ESG risks shall be considered for an investment firm's remuneration policy;*
  - iii) whether any ESG risks shall be considered for the treatment of risks; and*
  - iv) whether ESG risks shall be included into the supervisory review and evaluation process.*

***The assessment shall take into account the EBA report referred to in Article 32a, and the taxonomy on sustainable finance [add reference to legal text once available] (proposal by the Rapporteur, slightly redrafted)***
- (b) the effectiveness of information-sharing arrangements under this Directive;
- (c) the cooperation of the Union and Member States with third countries in the application of this Directive and of Regulation (EU) ---/--- [IFR];
- (d) the implementation of this Directive and Regulation (EU) ---/---[IFR] to investment firms on the basis of their legal structure or ownership model.

## DRAFT COMPROMISE Q

### Article 3: Definitions

***Bold/italics*** text represents changes to the Commission proposal. [NOTE: this compromise is formally not a compromise amendment but an oral amendment.]

#### *Article 3 Definitions*

[...]

(22) 'management body in its supervisory function' means the management body in its supervisory function *as defined in Article 3(8) of Directive 2013/36/EU acting in its role of overseeing and monitoring management decision-making*;

## DRAFT COMPROMISE R

### Recital 27: IPU requirement

***Bold/italics*** text represents changes to the Commission proposal. [NOTE: this compromise formally not a compromise amendment but an oral amendment.]

- (27) To ensure legal certainty and avoid overlaps between the current prudential framework applicable to both credit institutions and investment firms and this Directive, Regulation (EU) No 575/2013 and Directive 2013/36/EU are amended in order to remove investment firms from their scope. However, investment firms ~~which are part of a banking group~~ should remain subject to those provisions in Regulation (EU) No 575/2013 and Directive 2013/36/EU which are relevant for the banking group, such as the provisions on the intermediate EU parent undertaking referred to in [Article 21b] of Directive 2013/36/EU and to the rules on prudential consolidation set out in Chapter 2 of Title 2 of Part One of Regulation (EU) No 575/2013. *(Compromise proposal as follow-up of shadows' meeting on 11 September 2018 and ECB opinion)*