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AMENDMENTS: 62

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Prudential supervision of investment firms

Proposal for a directive COM(2017)0791 - C8-0452/2017 – 2017/0358(COD)

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Amendments per language:

EN: 62

Amendment 1
Sven Giegold
on behalf of the Verts/ALE Group

Proposal for a directive
Recital 18 a (new)

Text proposed by the Commission

Amendment

(18 a) The asset management sector has grown strongly in recent years in terms of assets under management. It has also experienced strong concentration as a small number of firms have become much larger than their competitors. This has increased the potential for systemic risk emanating from the activities of investment firms, e.g. the risks from liquidity mismatches between investment firms' investment assets and the redemption terms granted to their customers. Recent work conducted by the Financial Stability Board and the International Organization of Securities Commissions is contributing to the understanding of those risks, but has not yet progressed enough to be translated into comprehensive macroprudential regulation and supervision. Where appropriate, this Directive integrates certain recommendations from this evolving body of work, but leaves the elaboration of a comprehensive framework to the mandatory review three years after the entering into force of this Directive.

Or. en

Justification

Recent work by the FSB and IOSCO on the systemic risks posed by the activities and business models of asset managers has drawn our attention to this very important issue. While far from finished, this work deserves support. Where possible, its conclusions should also already be taken into account in relevant regulation and supervision arrangements.

Amendment 2
Sven Giegold
on behalf of the Verts/ALE Group

Proposal for a directive
Article 3 – paragraph 1 – point 20 a (new)

Text proposed by the Commission

Amendment

(20 a) 'large asset manager' is a group of individual undertakings belonging to a financial holding company, or as an investment holding company, or as a mixed financial holding company that together have over EUR 100 billion client assets under management, and that comprises at least one investment firm and any number of AIFMs as defined in Article 2(1) of Directive 2011/61/EU, or management companies as defined in Article 2 (1b) of Directive 2009/65/EC;

Or. en

Amendment 3
Sven Giegold
on behalf of the Verts/ALE Group

Proposal for a directive
Article 3 – paragraph 1 – point 20 b (new)

Text proposed by the Commission

Amendment

(20 b) 'third country large asset manager' is an intermediate EU parent undertaking subject to the requirements of Article 51(4);

Or. en

Amendment 4
Sven Giegold
on behalf of the Verts/ALE Group

Proposal for a directive
Article 3 – paragraph 1 – point 20 c (new)

Text proposed by the Commission

Amendment

(20 c) ‘liquidity mismatch’ means the possible mismatch between the liquidity of a fund’s investment assets and the redemption terms for fund units. Under certain conditions, especially when securities markets are stressed and/or when many fund clients want to redeem their shares at the same time (redemption run scenario), such mismatches can cause financial instability and contagion as funds find it difficult to liquidate investment assets quickly in an already adverse market ;

Or. en

Justification

Recent work by the FSB and IOSCO on the systemic risks posed by the activities and business models of asset managers, e.g. the risk of liquidity mismatches and the need to manage it, has drawn our attention to this very important issue. While far from finished, this work deserves support. Where possible, its conclusions should also already be taken into account in relevant regulation and supervision arrangements.

Amendment 5

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Title 4 – chapter 2 – section 1 a (new)

Text proposed by the Commission

Amendment

Liquidity mismatch risk

Article 22a

Liquidity management

1. Large asset managers and third country large asset managers shall make sure that their subsidiaries have in place effective strategies and processes to assess and manage on an ongoing basis the liquidity mismatch between investment assets and

redemption terms for fund units in such a way as to be able to cope with extreme but plausible scenarios of market stress.

2. Paragraph 1 does not apply to subsidiaries of a large asset manager or third country large asset manager that do not have cash redemption commitments to customers.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 54 to further specify strategies, policies, processes and systems that should be in place to monitor and properly manage liquidity mismatch risks. It shall take into account the ongoing work of the Financial Stability Board and the International Organization of Securities Commission on this matter.

Or. en

Justification

Recent work by the FSB and IOSCO on the systemic risks posed by the activities and business models of asset managers, e.g. the risk of liquidity mismatches and the need to manage it, has drawn our attention to this very important issue. While far from finished, this work deserves support. Where possible, its conclusions should also already be taken into account in relevant regulation and supervision arrangements.

Amendment 6

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 23 – paragraph 2

Text proposed by the Commission

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].

Amendment

2. This Section, *with the exception of Articles 25, paragraph 2 of Article 28 and Article 30*, 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].

By way of derogation to the first subparagraph, competent authorities may require an investment firm that meets all of the conditions set out in Article 12(1) of [Regulation (EU) ---/---[IFR] to apply totally or partially the requirements of this Section.

Or. en

Justification

Although, for reasons of proportionality, Class 3 firms shall, in general, not be required to apply the requirements of this Section, competent authorities shall have the discretion to require Class 3 firms to apply totally or partially the requirements of this Section wherever this seems warranted. However, as a matter of principle, also Class 3 firms shall in any case be required to apply the rules on Country-by-Country Reporting (Article 25), the bonus cap (Article 28 paragraph 2) as well as the rules on variable remuneration (Article 30).

Amendment 7

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 23 – paragraph 5 – introductory part

Text proposed by the Commission

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:

Amendment

5. Competent authorities *shall* set a shorter period than the two years referred in paragraph 1 of this Article where both of the following conditions are met:

Or. en

Amendment 8

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 24 – paragraph 4

Text proposed by the Commission

4. EBA, in consultation with ESMA,

Amendment

4. EBA, in consultation with ESMA,

shall *issue guidelines on* the application of the governance arrangements referred to in paragraph 1.

shall *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 [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.

Or. en

Amendment 9

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 25 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

1. Member States shall require investment firms to disclose by Member State and by third country in which the investment firm has *one or more establishments, including any affiliated undertakings, branches or a subsidiaries that are* financial *institutions* as defined in Article 4(1)(26) of Regulation (EU) No 575/2013, the following information on an annual basis:

Or. en

Amendment 10

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 25 – paragraph 1 – point a

Text proposed by the Commission

(a) ***the name, nature of activities and location of any subsidiaries and branches;***

Amendment

(a) ***a list of the names of their establishments, a brief description of the nature of their activities as well as the country of tax registration;***

Or. en

Amendment 11

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 25 – paragraph 1 – point b

Text proposed by the Commission

(b) the turnover;

Amendment

(b) ***the amount of the net turnover arising in the jurisdiction, including separate disclosure of the turnover made with related and unrelated parties;***

Or. en

Amendment 12

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 25 – paragraph 1 – point d

Text proposed by the Commission

(d) the profit or loss before tax;

Amendment

(d) the ***amount of*** profit or loss before ***income*** tax;

Or. en

Amendment 13

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 25 – paragraph 1 – point e

Text proposed by the Commission

(e) the **tax on profit or loss**;

Amendment

(e) the **amount of income tax accrued (current year) which is the current tax expense recognised on taxable profits or losses of the financial year by subsidiaries, branches, joint ventures, undertakings and establishments resident for tax purposes in the relevant tax jurisdiction**;

Or. en

Amendment 14

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 25 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(f a) the **amount of income tax paid, which is the amount of income tax paid during the relevant financial year by subsidiaries, branches, joint ventures, undertakings and establishments resident for tax purposes in the relevant tax jurisdiction**;

Or. en

Amendment 15

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 25 – paragraph 1 – point f b (new)

Text proposed by the Commission

Amendment

(f b) **stated capital**;

Or. en

Amendment 16
Sven Giegold
on behalf of the Verts/ALE Group

Proposal for a directive
Article 25 – paragraph 1 – point f c (new)

Text proposed by the Commission

Amendment

(f c) the amount of accumulated earnings at the end of the period;

Or. en

Amendment 17
Sven Giegold
on behalf of the Verts/ALE Group

Proposal for a directive
Article 25 – paragraph 1 – point f d (new)

Text proposed by the Commission

Amendment

(f d) fixed investment intangible plant, equipment, inventories and stocks and the annual cost of maintaining that tangible plant and equipment;

Or. en

Amendment 18
Sven Giegold
on behalf of the Verts/ALE Group

Proposal for a directive
Article 25 – paragraph 1 – point f e (new)

Text proposed by the Commission

Amendment

(f e) whether subsidiaries, branches, joint ventures, undertakings or establishments have benefited from a preferential tax treatment during the course of the period that might or does permit the payment of tax at a lower rate than that generally applied to profits arising in the jurisdiction and provide a

description of the arrangement in question.

Or. en

Amendment 19

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 25 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. For the purposes of point (e) of the first paragraph, the current tax expense shall relate only to the activities of an undertaking in the current financial year and shall only include those sums likely to fall due for payment within twelve months of the period end and shall exclude all deferred taxes.

Or. en

Amendment 20

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 27 – title

Text proposed by the Commission

Amendment

Risk-to-customers, risk-to-market, risk-to-firm

Risk-to-customers, risk-to-market, risk-to-firm *and liquidity mismatch risk*

Or. en

Amendment 21

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 27 – title

Text proposed by the Commission

Amendment

27 Risk-to-customers, risk-to-market,
risk-to-firm

Risk-to-customers, risk-to-market, risk-to-
firm **and liquidity mismatch risk**

Or. en

Amendment 22

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 27 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. Competent authorities shall ensure that large asset managers and third country large asset managers enforce effective strategies and processes to assess and manage on an ongoing basis the liquidity mismatch between investment assets and redemption terms for fund units in such a way as to be able to cope with extreme but plausible scenarios of market stress . In so doing they shall take into account the delegated acts adopted by the Commission in accordance with Article 22a.

Or. en

Justification

Recent work by the FSB and IOSCO on the systemic risks posed by the activities and business models of asset managers, e.g. the risk of liquidity mismatches and the need to manage it, has drawn our attention to this very important issue. While far from finished, this work deserves support. Where possible, its conclusions should also already be taken into account in relevant regulation and supervision arrangements.

Amendment 23

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive
Article 28 – paragraph 1 – introductory part

Text proposed by the Commission

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, comply with the following principles:

Amendment

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***, comply with the following principles:

Or. en

Justification

Alignment of the remuneration rules with those that apply under UCITs and AIFMD.

Amendment 24

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 28 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(d a) the highest remuneration in the investment firm does not exceed 30 times the average remuneration of the lowest paid 5 percent of employees;

Or. en

Amendment 25

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive
Article 28 – paragraph 1 – point d b (new)

Text proposed by the Commission

Amendment

(d b) a pay ratio of 1 to 20 between the average total remuneration and the highest total remuneration within the same investment firm is respected;

Or. en

Amendment 26
Sven Giegold
on behalf of the Verts/ALE Group

Proposal for a directive
Article 28 – paragraph 2

Text proposed by the Commission

Amendment

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

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, ***whereby the following principles shall apply:***

(i) the variable component shall not exceed 100 % of the fixed component of the total remuneration for each individual. Member States may set a lower maximum percentage;

(ii) Members States may allow shareholders or owners or members of the investment firm to approve a higher maximum level of the ratio between the fixed and variable components of remuneration provided the overall level of the variable component shall not exceed

*200 % of the fixed component of the total remuneration for each individual.
Member States may set a lower maximum percentage.*

Any approval of a higher ratio in accordance with the first subparagraph of this point shall be carried out in accordance with the following procedure:

— the shareholders or owners or members of the investment firm shall act upon a detailed recommendation by the investment firm giving the reasons for, and the scope of, an approval sought, including the number of staff affected, their functions and the expected impact on the requirement to maintain a sound capital base;

— shareholders or owners or members of the investment firm shall act by a majority of at least 66 % provided that at least 50 % of the shares or equivalent ownership rights are represented or, failing that, shall act by a majority of 75 % of the ownership rights represented;

— the investment firm shall notify all shareholders or owners or members of the investment firm, providing a reasonable notice period in advance, that an approval under the first subparagraph of this point will be sought;

— the investment firm shall, without delay, inform the competent authority of the recommendation to its shareholders or owners or members, including the proposed higher maximum ratio and the reasons therefore and shall be able to demonstrate to the competent authority that the proposed higher ratio does not conflict with the investment firm's obligations under this Directive and under Regulation (EU)[IFR], having regard in particular to the investment firm's own funds obligations;

— the investment firm shall, without

delay, inform the competent authority of the decisions taken by its shareholders or owners or members, including any approved higher maximum ratio pursuant to the first subparagraph of this point, and the competent authorities shall use the information received to benchmark the practices of investment firms in that regard. The competent authorities shall provide EBA with that information and EBA shall publish it on an aggregate home Member State basis in a common reporting format. EBA may elaborate guidelines to facilitate the implementation of this indent and to ensure the consistency of the information collected;

— staff who are directly concerned by the higher maximum levels of variable remuneration referred to in this point shall not, where applicable, be allowed to exercise, directly or indirectly, any voting rights they may have as shareholders or owners or members of the investment firm;

(iii) Member States may allow investment firms to apply the discount rate referred to in the second subparagraph of this point to a maximum of 25 % of total variable remuneration provided it is paid in instruments that are deferred for a period of not less than five years. Member States may set a lower maximum percentage.

Or. en

Justification

Because of waivers applied by Member States, many investment firms are currently not subject to the bonus cap under CRD IV. However, the bonus cap is an effective tool to limit incentives for excessive risk, in particular where there is no requirement to pay out variable remuneration in instruments or to apply deferral. In such situations, the only tool to limit and penalise excessive risk taking would be clawback, which is, however, difficult to apply in many jurisdictions. The bonus cap would in such situations limit the incentives for short-term risk taking.

Amendment 27

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 30 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Alignment of the remuneration rules with those that apply under UCITs and AIFMD.

Amendment 28

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 30 – paragraph 1 – point k

Text proposed by the Commission

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

Amendment

(k) at least 40% of the variable remuneration shall be deferred over ***at least five years*** 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%;

where the proportion of the variable remuneration deferred is at least 60%;

Or. en

Amendment 29

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 30 – paragraph 4 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 30

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

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

Text proposed by the Commission

Amendment

(f a) the integration of environmental, social and governance (ESG) factors and risks in the firm's risk-management system and the exposure of investments firms to environmental risks.

Or. en

Amendment 31

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 33 – paragraph 2

Text proposed by the Commission

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.

Amendment

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. ***The review and evaluation shall be updated at least on an annual basis for the investment firms that do not meet all of the conditions set out in that Article 12(1) of [Regulation (EU) ---/---[IFR].***

Or. en

Amendment 32

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 33 – paragraph 5

Text proposed by the Commission

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.

Amendment

5. When conducting the review and evaluation referred to in 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.

Or. en

Amendment 33

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 33 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6 a. *For the purpose of point (g) the EBA shall by 1 June 2020 issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to specify a methodology for the supervisory review and evaluation process regarding the integration of ESG factors and risks in the firm's risk-management system. Such Guidelines shall inter alia specify qualitative and quantitative criteria and metrics for the definition and the assessment of exposures to climate-change and environmental risks and in particular risks related to the depreciation of assets due to climate related regulatory changes. These guidelines shall take explicit account of the classification of activities contributing substantially or significantly harming environmental objectives and the methodology for identifying the percentage of assets funding environmentally sustainable economic activities as provided for in the Regulation [Regulation (EU) ---/--- [taxonomy], establishing a framework to facilitate sustainable investments.*

Or. en

Amendment 34

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 33 – paragraph 6 b (new)

Text proposed by the Commission

Amendment

6 b. *Taking into account the experience acquired in the application of the guidelines referred to in paragraph 7, EBA shall develop and update every two years thereafter draft regulatory technical standards to specify and update the*

methodology referred to in paragraph 7. EBA shall submit those draft regulatory technical standards to the Commission by 1 July 2021. Power is conferred on 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.

Or. en

Amendment 35
Sven Giegold

Proposal for a directive
Article 34 – paragraph 2

Text proposed by the Commission

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.

Amendment

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.*

Or. en

Amendment 36
Sven Giegold
on behalf of the Verts/ALE Group

Proposal for a directive
Article 36 – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission

(b) to require the reinforcement of the arrangements, processes, mechanisms and strategies implemented in accordance with Articles 22 and 24;

Amendment

(b) to require the reinforcement of the arrangements, processes, mechanisms and strategies implemented in accordance with Articles 22, **22a** and 24;

Justification

Refers to newly created Article 22a.

Amendment 37

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 36 – paragraph 2 – subparagraph 1 – point c

Text proposed by the Commission

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

Amendment

(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*** for the implementation of that plan and require improvements to that plan regarding scope and deadline;

Or. en

Amendment 38

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 36 – paragraph 2 – subparagraph 1 – point l

Text proposed by the Commission

(l) to require additional disclosures ***on an ad hoc basis***.

Amendment

(l) to require additional disclosures.

Or. en

Amendment 39

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive
Article 36 – paragraph 2 – subparagraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(b a) the additional information is required for the duration of the institution's supervisory review and evaluation process as referred to in Article 33.

Or. en

Amendment 40
Sven Giegold
on behalf of the Verts/ALE Group

Proposal for a directive
Article 36 – paragraph 2 – subparagraph 3

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 41
Sven Giegold
on behalf of the Verts/ALE Group

Proposal for a directive
Article 37 – paragraph 1 – introductory part

Text proposed by the Commission

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:

Amendment

1. Competent authorities shall impose the additional capital requirement referred to in Article 36(2)(a) **at least** 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:

Or. en

Amendment 42
Sven Giegold
on behalf of the Verts/ALE Group

Proposal for a directive
Article 37 – paragraph 2 – subparagraph 1

Text proposed by the Commission

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 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].

Amendment

For the purpose of paragraph 1(a), risks or elements of risk shall 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 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].

Or. en

Amendment 43
Sven Giegold
on behalf of the Verts/ALE Group

Proposal for a directive
Article 37 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

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].

deleted

Or. en

Amendment 44

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 37 – paragraph 4 – subparagraph 1 (new)

Text proposed by the Commission

Amendment

Competent authorities may require institutions to meet the additional own funds requirements referred to in Article 36(2)(a) with CET 1 capital.

Or. en

Amendment 45

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 37 – paragraph 5

Text proposed by the Commission

Amendment

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 4 of this Article. That includes, in the case set

5. Competent authorities shall ***justify*** 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 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.

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.

Or. en

Amendment 46

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 37 – paragraph 6

Text proposed by the Commission

Amendment

6. EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify how the risks and elements of risks referred to in paragraph 2 shall be measured. EBA shall ensure that the draft regulatory technical standards are proportionate in light of:

deleted

(a) the implementation burden on investment firms and competent authorities;

(b) 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.

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.

Or. en

Amendment 47

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 38 – paragraph 1 – point a

Text proposed by the Commission

(a) cyclical economic fluctuations do not lead to a breach of those requirements;

Amendment

(a) cyclical economic fluctuations do not lead to a breach of those requirements;
and

Or. en

Amendment 48

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 38 – paragraph 2

Text proposed by the Commission

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.

Amendment

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.*

Or. en

Amendment 49

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 38 – paragraph 2 a (new)

2 a. Failure of an investment firm to meet the requirements set out in paragraph 3 shall have the same effect as a failure to meet additional own funds requirements imposed pursuant to Article 37 only to the extent that, at the time of the distribution, the adjustments that have been made to the level of own funds fall short of the total adjustment set out in the guidance accrued linearly between the date of the communication and the completion date referred to in paragraph 3.

The shortfall referred to in the first subparagraph shall be calculated as follows:

ND = date of notification of guidance on adjustment to own funds

CD = date by which competent authority expects adjustment to own funds to be achieved

DD = date of distribution

ADD = adjustment to own funds made between ND and DD pursuant to the guidance in question

ACD = adjustment to own funds set out in the guidance for implementation by CD

Shortfall = $\max(0, (DD-ND) / (CD-ND) * ACD - ADD)$

Or. en

Amendment 50
Sven Giegold
on behalf of the Verts/ALE Group

Proposal for a directive
Article 39 – paragraph 1

Text proposed by the Commission

1. Competent authorities shall consult resolution authorities prior to determining any additional capital required pursuant to Article 36(2)(a) and prior to communicating to investment firms **any expectation for** adjustments to the level of capital as referred to in Article 38(2). For that purpose, competent authorities shall provide resolution authorities with all available information.

Amendment

1. Competent authorities shall consult resolution authorities prior to determining any additional capital required pursuant to Article 36(2)(a) and prior to communicating to investment firms **the** adjustments to the level of capital as referred to in Article 38(2). For that purpose, competent authorities shall provide resolution authorities with all available information.

Or. en

Amendment 51

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 39 – paragraph 2

Text proposed by the Commission

2. Competent authorities shall inform the relevant resolution authorities about the additional capital required pursuant to Article 36(2)(a) **and about any expectation** for adjustments as referred to in Article 38(2).

Amendment

2. Competent authorities shall inform the relevant resolution authorities about the additional capital required pursuant to Article 36(2)(a) for adjustments as referred to in Article 38(2).

Or. en

Amendment 52

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 41 – paragraph 2 – subparagraph 3 a (new)

Text proposed by the Commission

Amendment

Taking into account the experience acquired in the application of the guidelines referred to in paragraph 2, EBA shall develop draft regulatory

technical standards to specify the common procedures and methodologies for the supervisory review and evaluation process referred to in paragraph 1 and the assessment of the treatment of the risks referred to in Article 27.

EBA shall submit those draft regulatory technical standards to the Commission by 1 July 2021. Power is conferred on 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

Or. en

Amendment 53

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 51 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. When an investment firm established in the Union is part of a third country group whose subsidiaries and branches in the Union also comprise other investment firms, or AIFMs as defined in Article 2(1) of Directive 2011/61/EU, or management companies as defined in Article 2 (1b) of Directive 2009/65/EC, member states shall require the formation of an intermediate EU parent undertaking that is established in the Union, unless such an intermediate parent already exists.

Or. en

Amendment 54

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive
Article 51 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3 b. *Member States shall require an intermediate EU parent undertaking in the Union to obtain authorisation as a financial holding company, or as an investment holding company, or as a mixed financial holding company as defined in point (15) of Article 2 of Directive 2002/87/EC.*

Or. en

Amendment 55
Sven Giegold
on behalf of the Verts/ALE Group

Proposal for a directive
Article 51 – paragraph 3 c (new)

Text proposed by the Commission

Amendment

3 c. *Paragraphs 4 and 5 shall not apply where the volume of client assets under management in the Union of the third country group is lower than EUR 100 billion, unless the third country group is a non-EU G-SII.*

Or. en

Amendment 56
Sven Giegold
on behalf of the Verts/ALE Group

Proposal for a directive
Article 51 – paragraph 3 d (new)

Text proposed by the Commission

Amendment

3 d. *For the purposes of paragraphs 4, 5 and 6, the total value of assets in the Union of the third country group shall*

include the following:

(a) the total assets of each institution in the Union of the third country group, as resulting from their consolidated balance sheet; and

(b) the total assets of each branch of the third country group authorised in the Union

Or. en

Amendment 57

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 51 – paragraph 3 e (new)

Text proposed by the Commission

Amendment

3 e. Competent authorities shall inform ESMA and EBA about every authorisation granted pursuant to paragraph 5.

Or. en

Amendment 58

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 51 – paragraph 3 f (new)

Text proposed by the Commission

Amendment

3 f. ESMA shall publish on its website the list of all intermediate EU parent undertakings that have been granted authorisation in the Union.

Competent authorities shall ensure that there is a single intermediate EU parent undertaking for all institutions that are part of the same third country group.

Or. en

Amendment 59

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 60 – paragraph 1 – introductory part

Text proposed by the Commission

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:

Amendment

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

Or. en

Amendment 60

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 60 – paragraph 1 – point a

Text proposed by the Commission

(a) the provisions on remuneration in this Directive and in Regulation (EU) ---/-- -- [IFR];

Amendment

(a) the provisions on remuneration in this Directive and in Regulation (EU) ---/-- -- [IFR] **as well as in UCITS and AIFMD with the aim to achieve a level playing field for all investment firms active in the Union ;**

Or. en

Amendment 61

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 60 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(d a) the need to develop appropriate macroprudential tools to address the build-up and the materialisation of systemic risks, including liquidity mismatch risk and leverage in the investment industry. The Commission should pay close attention to ongoing work at the Financial Stability Board and International Organization of Securities Commissions and translate those principles into EU law.

Or. en

Amendment 62

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 60 – paragraph 1 – point d b (new)

Text proposed by the Commission

Amendment

(d b) the potential systemic impact of the three classes of investment firms and the necessity to tailor the macroprudential perspective to the specificities of investment firms' business models.

Or. en