Prudential supervision of investment firms

2017/0358(COD) - 27/09/2018 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Economic and Monetary Affairs adopted the report by Markus FERBER (EPP, DE) on the proposal for a directive of the European Parliament and of the Council on the prudential supervision of investment firms and amending Directives 2013/36/EU and 2014/65/EU.

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

Objective: the proposed proposal for a Directive establishes **effective, appropriate and proportionate prudential arrangements** at Union level that help to ensure that investment firms authorised to operate within the Union operate on a sound financial basis and are managed in an orderly way including in the best interests of their clients. To this end, it shall establish rules concerning:

- the **initial capital** of investment firms;
- **supervisory powers and tools** for the prudential supervision of investment firms by competent authorities;
- **publication requirements** for competent authorities in the field of prudential supervision of investment firms.

These measures shall help to:

- provide a **level playing field** across the EU and guaranteeing effective prudential supervision, while keeping compliance costs in check and ensuring sufficient capital for the risks of most investment firms;
- strike a balance between ensuring the safety and soundness of different investment companies and avoiding excessive costs that might undermine the viability of their business activity;
- ensure **harmonised prudential supervision** of investment firms across the Union functioning promptly and efficiently.

Competent authorities: Member States shall designate one or more competent authorities to carry out the functions and duties provided for in the Directive and inform the Commission, the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) of this designation.

Competent authorities may apply the requirements of Regulation (EU) No 575/2013 (the Own Funds Regulation, or CRR) on an undertaking other than a credit institution provided that certain conditions are met, for example (i) the undertaking is not a commodity dealer or an emission allowances dealer, or a collective investment undertaking, or an insurance undertaking or (ii) it carries out activities similar to those of undertakings which accept deposits or other repayable funds from the public and grant credits on their own accounts.

Any investment firm providing services covered by this Directive shall be required to take out **professional liability insurance**.

Competent authorities shall ensure that the transition from the current framework to the new one offers sufficient regulatory certainty for investment firms and does not deprive them of substantive rights from which they had benefitted under the current framework.

Capital requirements: prudential supervision and assessment powers shall allow competent authorities to assess qualitative elements, including governance and internal controls and risk management processes and procedures, and, where appropriate, to define additional requirements, in particular with regard to capital and liquidity requirements.

Competent authorities shall only set **additional capital requirements** for risks not yet covered or insufficiently covered by the K factors defined in the draft regulation accompanying the proposed directive.

Remuneration policy: investment firms shall be subject to clear principles of corporate governance arrangements and rules on remuneration that are **gender neutral** and that take into account the differences between credit institutions and investment firms.

The remuneration policy shall: (i) be clearly documented and proportionate to the size, internal organisation, nature, scope and complexity of the investment firm's activities; (ii) be non-discriminatory, meaning that identical or similar jobs are remunerated in the same way, regardless of the gender of the person holding the position; (iii) take into account not only the short-term profitability but also the long-term effects of investment decisions.

At least **40%** of the variable compensation shall consist of shares or equity instruments. At least **50%** of the variable remuneration shall be deferred for a period of five years, depending on the length of the investment firm's business cycle, the nature of its activity, its risks and the activities of the individual in question. If the variable remuneration is particularly high, the proportion of the variable remuneration shall be at least 60%.

Environmental, social and governance objectives (ESG): the EBA shall prepare a report on the introduction of technical criteria related to exposures to activities associated substantially with environmental, social, and governance (ESG) objectives for the supervisory review and evaluation process of risks, with a view to assessing the possible sources and effects of such risks on investment firms.

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