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EC PROPOSALS FOR A DIRECTIVE ON THE PRUDENTIAL SUPERVISION OF INVESTMENT FIRMS AND A REGULATION ON THE PRUDENTIAL REQUIREMENTS OF INVESTMENT FIRMS

AMAFI'S AMENDMENTS

On December 20th 2017, the European Commission (EC) published a proposal for a new prudential regime for investment firms (Investment Firms Regime, IFR), which consists of a proposal for a Directive on the prudential supervision of investment firms and a proposal for a Regulation on the prudential requirements of investment firms (the Proposal).

The Proposal which aims to put in place a more effective prudential and supervisory framework for investment firms (IF) is based on the "Opinion of the European Banking Authority in response to the European Commission's Call for Advice on Investment Firms" issued on September 29th 2017[1].

On September 27th 2018, the Committee on Economic and Monetary Affairs (ECON) adopted a Report respectively on the proposal for a directive[2] and for a regulation[3].

On January 4th 2019, the Council adopted a Presidency compromise proposal for a directive[4] and for a regulation[5].

AMAFI supports the global framework proposed by the EC as it intends to meet regulatory principles of proportionality and fair competition.

That being said, AMAFI would like to propose the following amendements on the Presidency compromise and on the ECON Reports.

1 EBA/Op/2017/11
2 (COM(2017)0791 - C8-0452/2017 – 2017/0358(COD))
3 (COM(2017)0790 - C8-0453/2017 – 2017/0359(COD))
4 2017/0358(COD)
5 2017/0359(COD)

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Proposal for a Regulation of the European Parliament and of the Council on the prudential requirements of investement firms and amending regulations (EU) No 575/2013, EU No 600/2014 and (EU) No 1093/2010.

On Presidency compromise proposal: 2017/0359(COD)

AMENDMENT 1

Article 6 (d) (i)	
Presidency compromise	Amendment
(i) the investment firm meets the conditions set out in Article 12(1)	***(i) When the investment firm is not a subsidiary defined in point (a) (ii) of this article,*** the investment firm meets the conditions set out in Article 12(1)

Justification

This amendment aims to give the power to competent authorities to exempt, within a group of investment firms which fulfill the conditions of point (a) (ii) of Article 6 **all subsidiaries** of the group from the application of Article 5 in respect of Parts Two to Four, Six and Seven.

Otherwise this situation would lead to several undesirable practical consequences which would be contrary to the political goal that aims to introduce a simplified regime for investment firms:

- Individual firms would have to capitalise intercompany transactions, including when they are purely technical or designed to perform transfer of scarce resources (capital, liquidity) within the group; in addition, such transactions would be double-counted, as an exposure between entity A and its subsidiary B would be capitalised both within A and B. From our views, this would lead to a very substantial increase in capital requirements which would not reflect an increase in the level of risk borne by the firms considered. K-CON (concentration risk) capital requirement is of specific concern in this context.

- Pillar 2 rules (e.g. ICAAP / SREP) would have to apply at individual level, even in the case of very small subsidiaries with no consistent risks borne in their balance sheet; it has to be reminded that, considering class 2 investment firms, in most cases even the group would be a relatively limited unit both in terms of size and complexity.

- It would generate additional reporting workload with no added value in terms of capacity to provide an accurate view of risks, as in many cases a consistent view of risks would only be provided by consolidated reports.

- Governance rules, such as, for example, risk and remuneration committees with only non executive directors would have to be duplicated for each individual entity comprising the group. This would both add substantial additional burden and impair the ability of the governance structure to assess and monitor the actual risk profile of the institution.

This is all the more justified inasmuch:

- The Presidency compromise reinforces the prudential consolidation provision for an investment firm group (Article 7).

- The Presidency compromise gives the possibility for a class 2 firm within a banking group to opt for the application of the CRD/CRR rules (Article 1.5). Given that those firms would be eligible for the exemption, there would be an uneven level playing field between banking groups and investment firm groups.

- Whithin an investment firm group, all class 2 firms will be subject to the same rules which allows a supervison on a consolidated basis only.

Proposal for a Regulation of the European Parliament and of the Council on the prudential requirements of investement firms and amending regulations (EU) No 575/2013, EU No 600/2014 and (EU) No 1093/2010.

On Presidency compromise proposal: 2017/0359(COD)

AMENDMENT 2

Article 61 (2) (c)	
Presidency compromise	Amendment
Where the services provided and the activities performed by third-country firms in the Union are likely to be of systemic importance for the Union, the Commission may attach specific operational conditions to an equivalence decision that would ensure that ESMA and national competent authorities have the necessary tools to prevent regulatory arbitrage and monitor the activities of third-country investment firms registered in accordance with Article 46(2) on their markets by :	Where the services provided and the activities performed by third-country firms in the Union are likely to be of systemic importance for the Union ***or are similar to the activities reffered to in points (3) and (6) of Section A of Annex 1 of Directive 2014/65/EU***, the Commission may attach specific operational conditions to an equivalence decision that would ensure that ESMA and national competent authorities have the necessary tools to prevent regulatory arbitrage and monitor the activities of third-country investment firms registered in accordance with Article 46(2) on their markets by :

Justification

On the one hand, the European Parliament proposes to impose third-country firms which provide investment services or perform investment activities listed in in points (3) and (6) to eligible counterparties and to professional clients to establish a branch within the Union.

On the other hand, the Presidency compromise enhances the condition under which third-country firms that are likely to be of systemic importance for the Union could provide investment services in the Union.

A compromise between both approaches could be to impose the rules set up by the Presidency not only to systemic important third-country firms but also to investment firms which provide services similar to those reffered to in points (3) and (6) of Section A of Annex 1 of Directive 2014/65/EU.

Draft report on the proposal for a regulation of the European Parliament and of the Council on the prudential requirements of investement firms and amending regulations (EU) No 575/2013, EU No 600/2014 and (EU) No 1093/2010.
On report (COM(2017)0790 - C8-0453/2017 – 2017/0359(COD))

AMENDMENT 3

Article 61 – paragraph 1(1a) (new) Regulation (EU) N° 600/2014 Article 17(a) (new)	
Parliament Report	Amendment
Systematic internalisers' quotes, and price improvements on those quotes and execution prices, shall comply with tick sizes set in accordance with Article 49 of Directive 2014/65/EU;"	Systematic internalisers' quotes, price improvements ~~on those quotes~~ and execution prices **that are, in each case, below large in scale** shall comply with tick sizes set in accordance with Article 49 of Directive 2014/65/EU **unless the conditions set out in Article 15(3) of Regulation (EU) No 600/2014 apply**.

Justification

On September 20th 2018, ESMA submitted to the European Commission an opinion on "Amendments to Commission Delegated Regulation (EU) 2017/587" (RTS11). In its opinion, ESMA proposed to amend article 10 of RTS 1 in ordrer to ensure that prices published by systematic internalisers reflect the minimum price increments applicable to orders and quotes advertised on trading venues.

This proposal, which establishes an actual level playing field between trading venues and systematic internalisers when pre-trade transparency is due and when competition occurs between all kinds of trading systems, is very welcome.

That being said, the ECON Report proposal raises serious issues:

- The industry has not been consulted on this modification contrary to the rules of the European legislation process ;
- Imposing systematic internalisers to follow the tick size regime when dealing in all sizes could have negative effects for investment firms which deal large transactions for their clients ;
- And above all, that was not the intent of the legislator to impose any kind of quoting obligation when the size of the trade is above the standard market size. Indeed, Article 14(2) of MiFIR (Obligation for systematic internalisers to make public firm quotes in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments) states that "*This Article and Articles 15, 16 and 17 shall apply to systematic internalisers when they deal in sizes up to standard market size.* ***Systematic internalisers shall not be subject to this Article and Articles 15, 16 and 17 when they deal in sizes above standard market size***".

Therefore the rules set up for systematic internalisers should be set up in order to ensure that:

- trades executed on systematic internalisers (SIs) or trading venues that are above Large in Scale (LIS) or that are non-price forming should not be subject to the tick size regime;

- for all sizes of order, mid-point should remain a valid execution price, permitted to trade at a half tick, both on trading venues and SIs

Draft report on the proposal for a regulation of the European Parliament and of the Council

on the prudential requirements of investement firms and amending regulations (EU) No 575/2013, EU No 600/2014 and (EU) No 1093/2010.

On report (COM(2017)0790 - C8-0453/2017 – 2017/0359(COD))

AMENDMENT 4

Recital 35 a	
Parliament Report	Amendment
With the aim of guaranteeing a level playing field and promoting the transparency of the Union market, Regulation (EU) No 600/2014 should be amended to subject systemic internalisers' quotes, price improvements and executions prices to the tick size regime when dealing in all sizes. Consequently, the currently applicable regulatory technical standards dealing with the tick size regime should also apply to its extended scope.	With the aim of guaranteeing a level playing field and promoting the transparency of the Union market, Regulation (EU) No 600/2014 should be amended to subject **below large in scale** systemic internalisers' quotes, price improvements and executions prices to the tick size regime ~~when in all sizes~~. Consequently, the currently applicable regulatory technical standards dealing with the tick size regime should also apply to its extended scope.

Justification

To ensure consistency whith amendement 3 above