EUROPEAN PARLIAMENT 2014 - 2019

Committee on Economic and Monetary Affairs

2014/0020(COD)

22.12.2014

***I
DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council structural measures improving the resilience of EU credit institutions (COM(2014)0043 – C7-0024/2014 – 2014/0020(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Gunnar Hökmark

Symbols for procedures

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

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

Amendments to a draft act

Amendments by Parliament set out in two columns

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

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

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▌ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.
By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council structural measures improving the resilience of EU credit institutions (COM(2014)0043 – C8-0024/2014 – 2014/0020(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2014)0043),

– having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0024/2014),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the European Economic and Social Committee of 9 April 2014[1],

– having regard to the opinion of the Committee of the Regions of 26 June 2014[2],

– having regard to Rule 59 of its Rules of Procedure,

– having regard to the report of the Committee on Economic and Monetary Affairs (A8-0000/2014),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation
Recital 3 a (new)

Text proposed by the Commission	*Amendment*
	(3a) Since the proposal of the HLEG the Union has adopted a large amount of

[1] OJ C 451 of 16.12.2014, p. 45.
[2] OJ C 271 of 19.8.2014, p. 87.

legislation (EMIR, MIFID2, CRR, CRD4, DGS, BRRD among others) addressing the problems of systemic risks, too low capital requirements, the need to safeguard depositors and lack of resolvability without of public support. Together with new rules and new structures for supervision the landscape has changed and the Single Rulebook has laid a new ground for financial markets in Europe, facilitating a single financial market and a working Capital Markets Union.

Or. en

Amendment 2

Proposal for a regulation
Recital 4

Text proposed by the Commission	*Amendment*
(4) The on-going banking regulatory reform agenda will significantly increase the resilience of both individual banks and the banking sector as a whole. However, a limited subset of the largest and most complex Union banking groups still remain too-big-to-fail, too-big-to-save and too-complex to manage, supervise and resolve. Structural reform is therefore an important complement to other regulatory initiatives and measures, as it would offer one way of more directly addressing intra-group complexity, intra-group subsidies, and excessive risk-taking incentives. A number of Member States have adopted or are considering adopting measures to introduce structural reform in their respective banking systems.	(4) The on-going banking regulatory reform agenda will significantly increase the resilience of both individual banks and the banking sector as a whole. However, a limited subset of the largest and most complex Union banking groups still remain too-big-to-fail, too-big-to-save and too-complex to manage, supervise and resolve. Structural reform***, based on systemic risks not foreseen or addressed in other legislation and on the resolvability of the institution,*** is therefore an important complement to other regulatory initiatives and measures, as it would offer one way of more directly addressing intra-group complexity, intra-group subsidies, and excessive risk-taking incentives. A number of Member States have adopted or are considering adopting measures to introduce structural reform in their respective banking systems.

Or. en

Amendment 3

Proposal for a regulation
Recital 9

Text proposed by the Commission	*Amendment*
(9) Harmonisation at Union level can ensure that Union banking groups, many of which operate in several Member States, are regulated by a common framework of structural requirements thereby avoiding competitive distortions, reducing regulatory complexity, avoiding unwarranted compliance costs for cross-border activities, promoting further integration in the Union market place and contributing to the elimination of regulatory arbitrage opportunities.	(9) Harmonisation at Union level can ensure that Union banking groups, many of which operate in several Member States, are regulated by a common framework of structural requirements thereby avoiding competitive distortions, reducing regulatory complexity, avoiding unwarranted compliance costs for cross-border activities, promoting further integration in the Union market place and contributing to the elimination of regulatory arbitrage opportunities. ***Systemic risks must be addressed in the same way where they appear based upon the same criteria all over the Union with the aim to secure that each institution is resolvable without putting the stability of the financial markets in the Union in danger.***

Or. en

Amendment 4

Proposal for a regulation
Recital 10

Text proposed by the Commission	*Amendment*
(10) Consistent with the goals of contributing to the functioning of the internal market***,*** it should be possible ***to grant a derogation*** for a credit institution ***from the provisions on separation of certain trading activities where a Member State has adopted national primary legislation prior to 29 January 2014***	(10) Consistent with the goals of contributing to the functioning of the internal market it should be possible for a ***core*** credit institution ***which does not deal in investments as a principal and holding trading assets, and any group where any core credit institution within the group is legally separated from group entities that***

(including secondary legislation subsequently adopted) prohibiting credit institutions, which take deposits from individuals and Small and Medium sized Enterprises (SMEs) from dealing in investments as a principal ***and holding*** trading assets***. The Member State should therefore be entitled to make a request*** to the ***Commission to grant a derogation from the provisions on separation of certain trading activities for a credit institution that is subject to the national legislation compatible with those provisions.*** This would allow Member States that already have primary legislation in place, the effects of which are equivalent to and consistent with this Regulation, to avoid ***alignment of existing, effective provisions. To ensure that the impact of that national legislation, as well as of subsequent implementing measures, does not jeopardise the aim or functioning of the internal market, the aim of that national legislation and related supervisory and enforcement arrangements must be able to ensure that credit institutions that take eligible deposits from individuals and from SMEs comply with legally binding requirements that are equivalent and compatible with the provisions provided in*** this Regulation. The competent authority supervising the credit institution ***subject to the national legislation*** in question should be responsible for ***providing an opinion that should accompany the request for the derogation***.

engage in the regulated activity of dealing in investments as a principal ***or hold*** trading assets ***and meets certain other conditions, to avoid being subject*** to the ***assessment set out in this Regulation. As well as creating a 'safe harbour' for institutions which take adequate steps to meet the objectives of this Regulation,*** this would allow ***institutions in*** Member States that already have primary legislation in place, the effects of which are equivalent to and consistent with this Regulation, to avoid ***being subject to further assessment and requirement to separate activities. This would enable a Member State which considers that its banking sector and the credit institutions in its territory and under its competent authorities' responsibility are of a size relative to the economy of the Member State as a whole that retail customers and depositors would face substantial risks without public support in the resolution, because of the proportion of trading and market making activities in its financial sector as a whole, to legislate on a national level in order to separate such activities in a way that is consistent with*** this Regulation. The competent authority supervising the credit institution in question should be responsible for ***verifying that the conditions of the exemption are met***.

Or. en

Amendment 5

Proposal for a regulation
Recital 12

Text proposed by the Commission	*Amendment*
(12) This Regulation intends to reduce excessive risk taking and rapid balance sheet growth, difficult resolution, difficult monitoring, conflicts of interest, competition distortions, and misallocation of capital. It also intends to shield institutions carrying out activities that deserve a public safety net from losses incurred as a result of other activities. Necessary rules should therefore contribute to refocusing banks on their core relationship-oriented role of serving the real economy, and avoid that bank capital be excessively allocated to trading at the expense of lending to the non-financial economy.	(12) This Regulation intends to reduce excessive risk taking and rapid balance sheet growth, difficult resolution, difficult monitoring, conflicts of interest, competition distortions, and misallocation of capital. It also intends to shield institutions carrying out activities that deserve a public safety net from losses incurred as a result of other activities. Necessary rules should therefore ***when needed*** contribute to refocusing banks on their core relationship-oriented role of serving the real economy, and avoid that bank capital be excessively allocated to trading at the expense of lending to the non-financial economy.

Or. en

Amendment 6

Proposal for a regulation
Recital 17

Text proposed by the Commission	*Amendment*
(17) To ensure that the entities subject to the prohibition of proprietary trading can continue to contribute toward the financing of the economy, they should be allowed to invest in ***a closed list of*** funds***. This exhaustive list should comprise*** closed-ended and unleveraged alternative investment funds (AIFs), European Venture Capital Funds, European Social Entrepreneurship Funds and European Long Term Investment Funds. To ensure that these funds do not endanger the viability and financial soundness of the credit institutions that invest in them, it is essential that closed-ended and unleveraged AIFs in which credit institutions can still invest are managed by	(17) To ensure that the entities subject to the prohibition of proprietary trading can continue to contribute toward the financing of the economy, they should be allowed to invest in ***certain funds. These funds shall include UCITS, other*** funds ***marketed to retail investors,*** closed-ended and unleveraged alternative investment funds (AIFs), European Venture Capital Funds, European Social Entrepreneurship Funds and European Long Term Investment Funds. To ensure that these funds do not endanger the viability and financial soundness of the credit institutions that invest in them, it is essential that closed-ended and unleveraged AIFs in which credit

AIF managers that are authorised and supervised in accordance with the relevant provisions of Directive 2011/61/EU of the European Parliament and of the Council[26] ***, and that those AIFs are established in the Union or, if they are not established in the Union, they are marketed in the Union according to the rules of that Directive.***	institutions can still invest are managed by AIF managers that are authorised and supervised in accordance with the relevant provisions of Directive 2011/61/EU of the European Parliament and of the Council[26]
[26] Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010	[26] Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010

Or. en

Amendment 7

Proposal for a regulation
Recital 23

Text proposed by the Commission	*Amendment*
(23) If, when assessing the trading activities, the competent authority concludes that they exceed certain metrics in terms of relative size, leverage, complexity, profitability, associated market risk, as well as interconnectedness, it should require their separation from the core credit institution unless the core credit institution can demonstrate to the satisfaction of the competent authority that those trading activities do not pose a threat to the financial stability of the core credit institution or to the Union financial system as a whole, taking into account the objectives set out in this Regulation.	(23) If, when assessing the trading activities, the competent authority concludes that they exceed certain metrics in terms of relative size, leverage, complexity, profitability, associated market risk, as well as interconnectedness, ***and further deems that there is a threat to the financial stability of the core credit institution or to the whole or part of the Union financial system, taking into account the objectives of this Regulation,*** it should require their separation from the core credit institution unless the core credit institution can demonstrate to the satisfaction of the competent authority that those trading activities do not pose a threat to the financial stability of the core credit institution or to the Union financial system as a whole, taking into account the

objectives set out in this Regulation.

Or. en

Amendment 8

Proposal for a regulation
Recital 24 a (new)

Text proposed by the Commission	*Amendment*
	(24a) On the other hand, market making is a necessary element for having a well-functioning market for corporate bonds and other debt instruments, since one of the main advantages of bonds for investors are that they are possible to trade in a market, and as such are liquid instruments that are appropriate for a broad variety of investors. The liquidity making in the European Union is supported by market making activities of banks, and in order to create an efficient Capital Markets Union and to develop deep and efficient bond markets, it is important to strike a balance between the liquidity provisioning of banks as market makers and financial stability concerns related to banks' trading activities.

Or. en

Justification

Some parts of banks' trading activities are essential to a Capital Markets Union where some of the funding of the real economy is done through securities markets. This should be reflected in the deliberations around the bank structural reform.

Amendment 9

Proposal for a regulation
Recital 24 b (new)

Text proposed by the Commission	*Amendment*
	(24b) A regulation that aims to prevent excessive risk taking related to trading activities should consider the actual risk taken by banks in trading and provide incentives for banks to diminish their trading related risk exposures or to increase eligible capital in order to cope with the legislation. The measurement of the size of banks' trading activities is most efficiently done by using the prudential measures of risk exposures that are used in the capital requirements regulation, since these measures are capturing the actual risk in trading positions better than other measures and since they are clearly defined and controlled through the supervisory framework.

Or. en

Justification

The Commission proposal relies on measuring the size of banks' trading activities through accounting based measures. Since accounting standards and practices vary across the European Union, and since banks can choose to a quite high degree how they classify trading assets, it is more appropriate to use prudential measures for the measurement of banks trading activities. Then the actual risk banks take on in relating to trading is also more accurately measured, and banks are given incentives to take on and manage risk appropriately.

Amendment 10

Proposal for a regulation
Recital 26

Text proposed by the Commission	*Amendment*
(26) To ensure an effective separation in legal, economic, governance and operational terms, core credit institutions and trading entities should meet capital, liquidity, and large exposure rules on a functional sub-group basis. They should	(26) To ensure***, when this is needed and is decided by competent authorities,*** an effective separation in legal, economic, governance and operational terms, core credit institutions and trading entities should meet capital, liquidity, and large

have strong independent governance and separate management bodies.	exposure rules on a functional sub-group basis. They should have strong independent governance and separate management bodies.

Or. en

Amendment 11

Proposal for a regulation
Recital 27

Text proposed by the Commission	*Amendment*
(27) Groups that qualify as mutuals, cooperatives, savings institutions or similar have a specific ownership and economic structure. Imposing some of the rules related to separation could require far-reaching changes to the structural organisation of those entities the costs of which could be disproportionate to the benefits. To the extent that those groups fall within the scope of the Regulation, the competent authority may decide to allow core credit institutions that meet the requirements set out in Article 49(3)(a) or (b) of Regulation (EU) No 575/2013 to hold capital instruments or voting rights in a trading entity where the competent authority considers that holding such capital instruments or voting rights is indispensable for the functioning of the group and that the core credit institution has taken sufficient measures in order to appropriately mitigate the relevant risks.	(27) Groups that qualify as mutuals, cooperatives, savings institutions or similar have a specific ownership and economic structure. Imposing some of the rules related to separation could require far-reaching changes to the structural organisation of those entities the costs of which could be disproportionate to the benefits. To the extent that those groups fall within the scope of the Regulation, the competent authority may decide to allow core credit institutions that meet the requirements set out in Article 49(3)(a) or (b) of Regulation (EU) No 575/2013 to hold capital instruments or voting rights in a trading entity where the competent authority considers that holding such capital instruments or voting rights is indispensable for the functioning of the group and that the core credit institution has taken sufficient measures in order to appropriately mitigate the relevant risks. ***Irrespective of a decision to separate, the competent authority shall have the power conferred by Article 104(1)(a) of Directive 2013/36/EU to impose an own funds requirement when the volume of risks and trading activities exceeds certain levels in order to incentivise an institution not to take unnecessary risks for its financial stability or the financial stability of the Union in whole or in part.***

Or. en

Amendment 12

Proposal for a regulation
Recital 37 a (new)

Text proposed by the Commission	*Amendment*
	(37a) For the purpose of carrying out its exclusive tasks, including the duties specified in this Regulation, the competent authority has the sanctioning powers specified in Articles 64ff of Directive 2013/36/EU and Article 18 of Regulation (EU) No 1024/2013.

Or. en

Amendment 13

Proposal for a regulation
Article 1 – paragraph 1 – introductory part

Text proposed by the Commission	*Amendment*
This Regulation aims at preventing systemic risk, financial stress or failure of large, complex and interconnected entities in the financial system, in particular credit institutions, and at meeting the following objectives:	This Regulation aims at preventing ***the build-up of*** systemic risk, financial stress or failure of large, complex and interconnected entities in the financial system, in particular credit institutions, and at meeting the following objectives:

Or. en

Amendment 14

Proposal for a regulation
Article 1 – paragraph 1 – point a

Text proposed by the Commission	*Amendment*
(a) to ***reduce*** excessive risk taking within	(a) to ***ensure the resolvability and secure***

the credit institution;	***that there is no*** excessive risk taking within the credit institution;

Or. en

Amendment 15

Proposal for a regulation
Article 1 – paragraph 1 – point c

Text proposed by the Commission	*Amendment*
(c) ***to avoid misallocation of resources and to*** encourage lending to the real economy;	(c) ***to achieve higher levels of liquidity making and investment in the framework of enhanced financial stability and take further steps to a Capital Markets Union by completing the Single Rulebook in order to facilitate and*** encourage lending to the real economy;

Or. en

Amendment 16

Proposal for a regulation
Article 1 – paragraph 1 – point d

Text proposed by the Commission	*Amendment*
(d) to contribute to undistorted conditions of competition for all credit institutions within the internal market;	(d) to contribute to undistorted conditions of competition for all credit institutions within the internal market ***by securing that losses in any institution will be paid by shareholders and investors by bail in***;

Or. en

Amendment 17

Proposal for a regulation
Article 1 – paragraph 1 – point e

Text proposed by the Commission	*Amendment*
(e) to reduce interconnectedness within the financial sector leading to systemic risk;	(e) to reduce interconnectedness within the financial sector leading to systemic risk ***by safeguarding depositors and addressing risks where they appear and improving resilience***;

Or. en

Amendment 18

Proposal for a regulation
Article 1 – paragraph 1 – point g

Text proposed by the Commission	*Amendment*
(g) to facilitate the orderly resolution and recovery of the group.	(g) ***to reduce complexity within core credit institutions to remove impediments to resolvability,*** to facilitate ***the effective use of relevant and sufficient tools for*** the orderly resolution and recovery of the group.

Or. en

Amendment 19

Proposal for a regulation
Article 2 – paragraph 1 – point b

Text proposed by the Commission	*Amendment*
(b) ***the separation of certain*** trading activities**.**	(b) ***measures to reduce excessive risk taking due to*** trading activities***;***

Or. en

Amendment 20

Proposal for a regulation
Article 2 – paragraph 1 – point b a (new)

Text proposed by the Commission	*Amendment*
	(b a) the management and structuring of certain trading activities when they are deemed to be of a risk to the institution or to the safeguarding of depositors, thereby building up systemic risk.

Or. en

Amendment 21

Proposal for a regulation
Article 3 – paragraph 1 – point b – introductory part

Text proposed by the Commission	*Amendment*
(b) any of the following entities that for a period of three consecutive years has total assets amounting at least to EUR 30 billion and has trading ***activities*** amounting at least to EUR 70 billion or ***10*** per cent of its total ***assets:***	(b) any of the following entities that for a period of three consecutive years has total assets amounting at least to EUR 30 billion and has trading ***related risk exposures*** amounting at least to EUR 70 billion or ***50*** per cent of its total ***eligible liabilities for bail-in requirements as defined in Article 45 of Directive 59/2014/EU [BRRD]***

Or. en

Justification

The reasoning behind this proposal is given in recital 24b. A risk-related limit based on prudential standards is a more appropriate way of defining when a bank has too large exposures towards trading activities. The exact definition is proposed in Article 23. It's also more appropriate to relate the size of the trading activities to the size of the outstanding bailinable debt, since that is the real buffer that can be used to absorb losses before taxpayers' money are at risk.

Amendment 22

Proposal for a regulation
Article 5 – paragraph 1 – point 4

Text proposed by the Commission	*Amendment*
4. ‘proprietary trading’ means using own capital or borrowed money to take positions in any type of transaction to purchase, sell or otherwise acquire or dispose of any financial instrument or commodities for the sole purpose of making a profit for own account, and without any connection to actual or anticipated client activity or for the purpose of hedging the ***entity’s*** risk as result of actual or anticipated client activity, through the use of desks, units, divisions or individual traders specifically dedicated to such position taking and profit making, including through dedicated web-based proprietary trading platforms;	4. ′proprietary trading′ means using own capital or borrowed money to take positions***, in reaction to and with the motivation of exploiting actual or expected movements in market valuations,*** in any type of transaction to purchase, sell or otherwise acquire or dispose of any financial instrument or commodities for the sole purpose of making a profit for own account, and without any connection to actual or anticipated client activity or for the purpose of hedging the ***entity's*** risk as ***a*** result of actual or anticipated client activity, through the use of desks, units, divisions or individual traders specifically dedicated to such position taking and profit making, including through dedicated web-based proprietary trading platforms***. This definition includes any such transaction undertaken with the aim of making profit, irrespective of whether such profit would be realised in the short term or in the longer term, or is in fact realised at all***;

Or. en

Amendment 23

Proposal for a regulation
Article 5 – paragraph 1 – point 12

Text proposed by the Commission	*Amendment*
12. ‘market making’ means a financial institution's commitment to provide market liquidity on a regular and on-going basis, by posting two-way quotes with regard to a certain financial instrument, or as part of its usual business, by fulfilling orders	12. ′market making′ means a financial institution's commitment to provide market liquidity on a regular and on-going basis, by posting two-way quotes with regard to a certain financial instrument, or as part of its usual business, by fulfilling orders

initiated by clients or in response to clients' requests to trade, ***but in both cases without being exposed to material market risk***;	initiated by clients or in response to clients' requests to trade, ***or in reasonable anticipation of potential client activity, and by hedging positions arising from the fulfilment of these tasks***;

Or. en

Amendment 24

Proposal for a regulation
Article 5 – paragraph 1 – point 22 a (new)

Text proposed by the Commission	*Amendment*
	22a. "concentration" means a concentration as determined in accordance with Council Regulation (EC) No 139/2004;

Or. en

Amendment 25

Proposal for a regulation
Article 5 – paragraph 1 – point 22 b (new)

Text proposed by the Commission	*Amendment*
	22b. "trading activities" means market making, investments in and acting as a sponsor for securitisation, and trading in derivatives.

Or. en

Amendment 26

Proposal for a regulation
Article 6 – paragraph 2a (new)

Text proposed by the Commission	*Amendment*
	(ba) 1a. The prohibition in point (b) of paragraph 1 shall not apply if the amount of those activities is below 2% of the core credit institution's own funds, calculated at the consolidated basis. The amount of those activities above 2% of the core credit institution's own funds, calculated on the consolidated basis, shall be phased out during a period of 5 years after this Regulation enters into force.

Or. en

Justification

A complete prohibition of investments in AIFs is not merited. There are occasions when an exposure in AIF.s might be part of a common commercial banking business, for instance in relation to private equity firms or funds managed for pension purposes. A small exposure should thus be allowed.

Amendment 27

Proposal for a regulation
Article 6 – paragraph 3

Text proposed by the Commission	*Amendment*
3. The restrictions laid down in point (b) of paragraph 1 shall not apply with regard to ***closed-ended and unleveraged AIFs as defined in Directive 2011/61/EU where those AIFs are established in the Union or, if they are not established in the Union, they are marketed in the Union according to Articles 35 or 40 of*** Directive 2011/61/EU , to qualifying venture capital funds as defined in Article 3(b) of Regulation (EU) No 345/2013, to qualifying social entrepreneurship funds as defined in Article 3(b) of Regulation (EU) No 346/2013, and to AIFs authorized as ELTIFs in accordance with Regulation (EU) No [XXX/XXXX].	3. The restrictions laid down in point (b) of paragraph 1 shall not apply with regard to ***UCITS, other funds marketed to retail investors, closed-ended and unleveraged AIFs as defined in*** Directive 2011/61/EU, to qualifying venture capital funds as defined in Article 3(b) of Regulation (EU) No 345/2013, to qualifying social entrepreneurship funds as defined in Article 3(b) of Regulation (EU) No 346/2013, and to AIFs authorized as ELTIFs in accordance with Regulation (EU) No [XXX/XXXX].

Or. en

Amendment 28

Proposal for a regulation
Chapter 3 – title

Text proposed by the Commission	*Amendment*
Separation of certain trading activities	***Measures regarding*** certain trading activities

Or. en

Amendment 29

Proposal for a regulation
Article 8 – paragraph 1 – introductory part

Text proposed by the Commission	*Amendment*
1. For the purposes of this Chapter, trading activities shall include ***activities other than***:	1. For the purposes of this Chapter, trading activities shall ***not*** include ***the following activities***:

Or. en

Amendment 30

Proposal for a regulation
Article 8 – paragraph 1 – point i a (new)

Text proposed by the Commission	*Amendment*
	(ia) activities for the purpose of prudently managing capital, liquidity, funding and balance sheet;

Or. en

Amendment 31

Proposal for a regulation
Article 8 – paragraph 1 – point i b (new)

Text proposed by the Commission	*Amendment*
	(ib) the selling of interest rate derivatives foreign exchange derivatives, credit derivatives, emission allowances derivatives and commodity derivatives eligible for central counterparty clearing and emission allowances to its non-financial clients and to financial entities referred to in the second and third indents of point (19) of Article 5, to insurance undertakings and to institutions providing for occupational retirement benefits for the sole purpose of the sale is to hedge interest rate risk, foreign exchange risk, credit risk, commodity risk or emissions allowance risk.

Or. en

Amendment 32

Proposal for a regulation
Article 9 – paragraph 1 – point a

Text proposed by the Commission	*Amendment*
(a) a core credit institution established in the Union, which is neither a parent undertaking nor a subsidiary, including all its branches irrespective of where they are located;	(a) ***subject to paragraph 1a,*** a core credit institution established in the Union, which is neither a parent undertaking nor a subsidiary, including all its branches irrespective of where they are located;

Or. en

Amendment 33

Proposal for a regulation
Article 9 – paragraph 1 – point b

Text proposed by the Commission	*Amendment*
(b) an EU parent, including all branches and subsidiaries irrespective of where they are located, where one of the group entities is a core credit institution established in the Union;	(b) ***subject to paragraph 1b,*** an EU parent, including all branches and subsidiaries irrespective of where they are located, where one of the group entities is a core credit institution established in the Union;

Or. en

Amendment 34

Proposal for a regulation
Article 9 – paragraph 1 – point c

Text proposed by the Commission	*Amendment*
(c) EU branches of credit institutions established in third countries.	(c) EU branches of credit institutions established in third countries***, unless they are subject to a legal framework deemed equivalent in accordance with Article 27(1)***.

Or. en

Amendment 35

Proposal for a regulation
Article 9 – paragraph 1 a (new)

Text proposed by the Commission	*Amendment*
	1a. Paragraph 1(a) does not apply to a core credit institution which does not engage in the regulated activity of dealing in investments as principal and holding trading assets, with the exception of risk-mitigating activities for the purpose of prudently managing its capital, liquidity and funding and to provide limited risk management services to customers.

Or. en

Amendment 36

Proposal for a regulation
Article 9 – paragraph 1 b (new)

Text proposed by the Commission	*Amendment*
	1b. An assessment under paragraph 1(b) shall not affect any core credit institution within the group which is legally separated from group entities that engages in the regulated activity of dealing in investments as a principal or hold trading assets and which:
	- is able to make decisions independently of other group entities;
	- has a management body that is independent of other group entities;
	- is subject to capital and liquidity requirements in its own right; and
	- may not enter into contracts or transactions with other group entities other than on terms similar to those referred to in Article 13(7).
	Where all core credit institutions within the group meet these conditions, paragraph 1(b) does not apply.

Or. en

Amendment 37

Proposal for a regulation
Article 9 – paragraph 1 c (new)

Text proposed by the Commission	*Amendment*
	1c. Paragraphs 1a and 1b shall not apply to institutions and groups which have been deemed unresolvable following the assessment by the resolution authority provided for in Articles 15 and 16 of

Directive 59/2014/EU [BRRD].

Or. en

Amendment 38

Proposal for a regulation
Article 9 – paragraph 1 d (new)

Text proposed by the Commission	*Amendment*
	1d. For the purposes of paragraph 1, an institution shall not be considered a core credit institution solely by virtue of deposits where these deposits are greater €300 000 and are held for a minimum of 12 months.

Or. en

Amendment 39

Proposal for a regulation
Article 9 – paragraph 1 e (new)

Text proposed by the Commission	*Amendment*
	1e. Where an institution is separated according to paragraph 1a or 1b above, such separation or restrictions must be achieved on a timetable comparable to separation under this Regulation.

Or. en

Amendment 40

Proposal for a regulation
Article 9 – paragraph 2 – point c

Text proposed by the Commission	*Amendment*
(c) the relative importance of counterparty credit risk, as measured by the fair value of derivatives divided by total ***trading*** assets;	(c) the relative importance of counterparty credit risk, as measured by the fair value of derivatives divided by total assets;

Or. en

Justification

The indicator in point 2 c) of the article is awkward since the size of the counterparty risk is related to the size of trading assets. This means that even if the counterparty risk is small, the indicator will show a high value if the trading assets are even smaller. That leads to counterintuitive results, and it's more natural to relate the counterparty risk to any measure relating to the total size of the bank, such as the total assets.

Amendment 41

Proposal for a regulation
Article 9 – paragraph 2 – point f

Text proposed by the Commission	*Amendment*
(f) the relative importance of market risk, as measured by ***computing the difference between trading assets and liabilities in absolute value and dividing it*** by the ***simple average between trading assets and trading liabilities***;	(f) the relative importance of market risk, as measured by ***the risk exposure amount for market risk divided*** by the ***total risk exposure amount***;

Or. en

Justification

The indicator in point 2(f) is difficult to understand, the size of the risk exposure for market risk is a much more well-defined and clear way to measure market risk.

Amendment 42

Proposal for a regulation
Article 9 – paragraph 2 – point h

Text proposed by the Commission	*Amendment*
(h) credit and liquidity risk arising from commitments and guarantees provided by the core credit institution.	***deleted***

Or. en

Justification

The indicator in 2(h)is not necessarily at all related to trading activities, since commitments and guarantees are common parts of traditional commercial lending in banks, so it's not useful as an indicator measuring the importance of trading activities.

Amendment 43

Proposal for a regulation
Article 9 – paragraph 2 a (new)

Text proposed by the Commission	*Amendment*
	2a. The competent authority may require all quantitative and qualitative information it deems relevant for the assessment of trading activities under paragraph 1.

Or. en

Amendment 44

Proposal for a regulation
Article 10 – paragraph 1

Text proposed by the Commission	*Amendment*
1. Where the competent authority concludes that, following the assessment referred to in Article 9(1), the ***limits and*** conditions linked to the metrics referred to in points (a) to (***h***) of Article 9(2) and specified in the delegated act referred to in paragraph 5 are met, and it ***therefore*** deems that there is a threat to the ***financial***	1. Where the competent authority concludes that, following the assessment referred to in Article 9(1), the conditions linked to the metrics referred to in points (a) to (***g***) of Article 9(2) and specified in the delegated act referred to in paragraph 5 are met, and it deems that there is a threat to the ***resolvability*** of the core credit

stability of the core credit institution ***or to the Union financial system as a whole***, taking into account the objectives referred to in Article 1, it shall, no later than two months after the finalisation of that assessment, start the procedure leading to a decision as referred to in the second subparagraph of paragraph 3.

institution, taking into account the objectives referred to in Article 1 ***and the size, complexity and risk intensity of the institution***, it shall, no later than two months after the finalisation of that assessment, start the procedure leading to a decision as referred to in the second subparagraph of paragraph 3.

Or. en

Justification

Losses in the trading business of a bank should not put at risk the critical functions that the core credit institution performs. The focus should be whether an institution is possible to resolve when taking trading activities into account. The key issue is whether the institution can be resolved appropriately considering the possible contagion from trading, when taking into account the possibility to use the BRRD measures, the ultimate goal being the protection of the core functions of the banking system.

Amendment 45

Proposal for a regulation
Article 10 – paragraph 2

Text proposed by the Commission

2. Where the limits and conditions referred to in paragraph 1 are not met, the competent authority may still start the procedure leading to a decision as referred to in the third subparagraph of paragraph 3 where it concludes, following the assessment referred to in Article 9(1), that any trading activity, with the exception of trading in derivatives other than those permitted under Article 11 and 12, carried out by the core credit institution, poses a threat to the financial stability of the ***core credit institution or to*** the Union financial system ***as a whole*** taking into account the objectives referred to in Article 1.

Amendment

2. Where the limits and conditions referred to in paragraph 1 are not met, the competent authority may still start the procedure leading to a decision as referred to in the third subparagraph of paragraph 3 where it concludes, following the assessment referred to in Article 9(1), that any trading activity, with the exception of trading in derivatives other than those permitted under Article 11 and 12, carried out by the core credit institution, poses a threat to the financial stability of the ***whole or part of*** the Union financial system taking into account the objectives referred to in Article 1.

Or. en

Justification

Even if an institution's trading activities are not deemed to be excessively risky by the competent authority, the institution may nevertheless be deemed risky. Although the threshold for taking measures in such a case is higher, if even part of the Union financial system is deemed to be at risk, additional measures can be taken.

Amendment 46

Proposal for a regulation
Article 10 – paragraph 3 – subparagraph 2

Text proposed by the Commission	*Amendment*
Unless the core credit institution demonstrates, within the time limit referred to in the first subparagraph, to the satisfaction of the competent authority, that the reasons leading to the conclusions are not justified, the competent authority shall adopt a decision addressing the core credit institution and requiring it ***not to carry out*** the trading activities ***specified in those conclusions.*** The competent authority shall state the reasons for its decision and publicly disclose it.	Unless the core credit institution demonstrates, within the time limit referred to in the first subparagraph, to the satisfaction of the competent authority, that the reasons leading to the conclusions are not justified, the competent authority shall adopt a decision addressing the core credit institution and requiring it ***to reduce the risk that potential losses stemming from*** the trading ***related*** activities ***are transferred to the core credit institution by taking measures in accordance with Article 17 of Directive 2014/59/EU (the BRRD)to restore the resolvability of the credit institution. Possible measures taken by the competent authority include enhanced supervision, higher capital requirements or separation of the relevant trading activities from the core credit institution.*** The competent authority shall state the reasons for its decision and publicly disclose it.

Or. en

Justification

The intervention by the authority shall be focused on making the institution resolvable. In order to achieve this goal, different measures can be taken, including increased supervision, enhanced capital requirements and separation.

Amendment 47

Proposal for a regulation
Article 10 – paragraph 3 – subparagraph 4 a (new)

Text proposed by the Commission	*Amendment*
	The competent authority may in particular authorise the core credit institution to carry out those market making activities which do not pose a threat to the financial stability of the core credit institution or to the whole or part of the Union financial system.

Or. en

Justification

Market making activities that will continue to be carried out in the core credit institution should be consistent with the purposes of the proposed regulation. Such activities should not lead to the creation of a bank that is too-big-to-fail or too-interconnected-to-fail or include proprietary trading. The competent authority may authorise the core credit institution to carry out those market making activities that do not pose a threat to the financial stability of the institution or to the Union.

Amendment 48

Proposal for a regulation
Article 10 – paragraph 3 a (new)

Text proposed by the Commission	*Amendment*
	3a. If a decision referred to in this paragraph is taken by the competent authority, the institution shall disclose the trading activities in a separate balance sheet, even if the decision does not include legal separation of the activities. The disclosure in the separate balance sheet shall make the public aware of the size, the risk, the funding and the content of the relevant trading activities.

Or. en

Justification

Trading activities should be transparent even when a decision to separate is not taken. Banks falling within the scope have a large amount of trading activities. Even if these do not become subject to separation, being able to assess the size of the trading activities and the riskiness thereof is helpful to investors and the general public. Therefore, trading activities should be disclosed in a separate balance sheet that also includes other information that increases the transparency of the trading business.

Amendment 49

Proposal for a regulation
Article 10 – paragraph 5 – point b – introductory part

Text proposed by the Commission	*Amendment*
(b) specify which type of securitisation is not considered to pose a threat to the ***financial stability*** of the core credit institution or to the ***Union financial system as a whole*** with regard to each of the following aspects:	(b) specify which type of securitisation is not considered to pose a threat to the ***resolvability*** of the core credit institution or to the ***whole or part of the Union financial system*** with regard to each of the following aspects:

Or. en

Justification

Not only the EU as a whole, but also parts of the EU are in focus when threats to financial stability are assessed.

Amendment 50

Proposal for a regulation
Article 11 – paragraph 1 – subparagraph 1

Text proposed by the Commission	*Amendment*
A core credit institution that has been subject to a decision referred to in Article 10(3) ***may*** carry out trading activities to the extent that the purpose is limited to only prudently managing its capital, liquidity and funding.	***Without prejudice to the decision of the competent authority*** referred to in Article 10(3)***, a core credit institution may*** carry out trading activities to the extent that the purpose is limited to only prudently managing its capital, liquidity and funding.

Or. en

Justification

The suggested change in the first sentence aims to clarify that the separation decision will identify all the activities which the core credit institution may continue to perform.

Amendment 51

Proposal for a regulation
Article 11 – paragraph 1 – subparagraph 2

Text proposed by the Commission	*Amendment*
As part of the prudent management of its capital, liquidity and funding, a core credit institution may only use interest rate derivatives, foreign exchange derivatives and credit derivatives eligible for central counterparty clearing to hedge its overall balance sheet risk**.** The core credit institution shall demonstrate to the competent supervisor that the hedging activity is designed to reduce, and demonstrably reduces or significantly mitigates, specific, identifiable risks of individual or aggregated positions of the core credit institution.	As part of the prudent management of its capital, liquidity and funding, a core credit institution may only use interest rate derivatives, foreign exchange derivatives and credit derivatives eligible for central counterparty clearing to hedge its overall balance sheet risk***, unless the appropriate hedges can only be done through over-the-counter derivatives, in which case these derivatives may be used in order to ensure that the core credit institution achieves an as well hedged balance sheet as possible.*** The core credit institution shall demonstrate to the competent supervisor that the hedging activity is designed to reduce, and demonstrably reduces or significantly mitigates, specific, identifiable risks of individual or aggregated positions of the core credit institution.

Or. en

Justification

Not all appropriate hedges can be done through centrally cleared derivatives, which are often standardised to some degree and may provide for less effective hedges than derivatives tailored to fit the hedged position. The risk management of the core credit institution will be less efficient and the risk level may increase if only centrally cleared derivatives may be used.

Amendment 52

Proposal for a regulation
Article 12 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission	*Amendment*
A core credit institution that has been subject to a decision referred to in Article 10(3) ***may*** sell interest rate derivatives, foreign exchange derivatives, credit derivatives, emission allowances derivatives and commodity derivatives eligible for central counterparty clearing and emission allowances to its non-financial clients, to financial entities referred to in the second and third indents of point (19) of Article 5, to insurance undertakings and to institutions providing for occupational retirement benefits when the following conditions have been satisfied:	***Without prejudice to the decision of the competent authority*** referred to in Article 10(3)***, a core credit institution may also*** sell interest rate derivatives, foreign exchange derivatives, credit derivatives, emission allowances derivatives and commodity derivatives eligible for central counterparty clearing and emission allowances to its non-financial clients, to financial entities referred to in the second and third indents of point (19) of Article 5, to insurance undertakings and to institutions providing for occupational retirement benefits***, and may engage in offsetting transactions to lay off risk in such sales,*** when the following conditions have been satisfied:

Or. en

Amendment 53

Proposal for a regulation
Article 13 – paragraph 8

Text proposed by the Commission	*Amendment*
8. A majority of the members of the management body of the core credit institution and of the trading entity respectively shall consist of persons who are not members of the management body of the other entity. No member of the management body of either entity shall perform an executive function in both entities with the exception for the risk management ***officer*** of the parent undertaking.	8. A majority of the members of the management body of the core credit institution and of the trading entity respectively shall consist of persons who are not members of the management body of the other entity. No member of the management body of either entity shall perform an executive function in both entities with the exception for the risk management***, internal audit and the compliance officers*** of the parent undertaking.

Or. en

Justification

Compliance and internal audit functions are often managed centrally in financial groups, for the same reasons as for risk functions. It is reasonable that officers from these functions can be used throughout the organisation to the same extent as for risk management officers.

Amendment 54

Proposal for a regulation
Article 14 – paragraph 2

Text proposed by the Commission	*Amendment*
2. When measures have been imposed in accordance with this Chapter the core credit institution shall not incur an intra-group exposure that exceeds 25 per cent of the core credit institution's eligible capital to an entity that does not belong to the same sub-group as the core credit institution. The intra-group exposure limit shall apply on a sub-consolidated basis, and after taking into account the effect of the credit risk mitigation and exemptions in accordance with Articles 399 to 403 of Regulation (EU) No 575/2013 ***and Article 16 of this Regulation***.	2. When measures have been imposed in accordance with this Chapter the core credit institution shall not incur an intra-group exposure that exceeds 25 per cent of the core credit institution's eligible capital to an entity that does not belong to the same sub-group as the core credit institution. The intra-group exposure limit shall apply on a sub-consolidated basis, and after taking into account the effect of the credit risk mitigation and exemptions in accordance with Articles 399 to 403 of Regulation (EU) No 575/2013.

Or. en

Justification

Article 16 is suggested to be deleted, see below.

Amendment 55

Proposal for a regulation
Article 15 – paragraph 1 – point a

Text proposed by the Commission	*Amendment*
(a) a large exposure that exceeds 25 per cent of the core credit institution's eligible capital to a financial entity. That exposure limit shall apply on an individual and on a sub-consolidated basis, and after taking	(a) a large exposure that exceeds 25 per cent of the core credit institution's eligible capital to a financial entity. That exposure limit shall apply on an individual and on a sub-consolidated basis, and after taking

into account the effect of the credit risk mitigation and exemptions in accordance with Articles 399 to 403 of Regulation (EU) No 575/2013 ***and Article 16 of this Regulation***;	into account the effect of the credit risk mitigation and exemptions in accordance with Articles 399 to 403 of Regulation (EU) No 575/2013;

Or. en

Amendment 56

Proposal for a regulation
Article 15 – paragraph 1 – point b

Text proposed by the Commission	*Amendment*
(b) large exposures that in total exceed 200 per cent of the core credit institution's eligible capital to financial entities. That exposure limit shall apply on an individual and on a sub-consolidated basis, and after taking into account the effect of the credit risk mitigation and exemptions in accordance with Articles 399 to 403 of Regulation (EU) No 575/2013 and Article 16 of this Regulation.	***deleted***

Or. en

Justification

There is no reason why the total volume of large exposures allowed should be more limited for a core credit institution that has been separated than for a core credit institution that has not been separated because the trading activities are more limited, especially when it comes to exposures outside of the group. The part of the article suggesting that is thus deleted.

Amendment 57

Proposal for a regulation
Article 15 – paragraph 2

Text proposed by the Commission	*Amendment*
2. The Commission shall be empowered to adopt delegated acts in accordance with	***deleted***

Article 35 to adjust the level of the extra-group aggregate large exposure limit as set out in point (b) of paragraph 1, in line with the extent to which the credit risk mitigation has been recognised.

Or. en

Justification

Delegated acts are not needed in these circumstances, either.

Amendment 58

Proposal for a regulation
Article 16

Text proposed by the Commission	*Amendment*
Article 16	***deleted***
Credit risk mitigation techniques	
In addition to the provisions of Articles 399 to 403 of Regulation (EU) No 575/2013, when measures have been imposed in accordance with this Chapter of this Regulation, restrictions with respect to the recognition of credit mitigation techniques shall apply to the computation of exposure values for the purposes of compliance with the large exposure limits as referred to in Articles 14 and 15 of this Regulation.	
The Commission shall be empowered to adopt delegated acts in accordance with Article 35 to specify the extent to which credit risk mitigation techniques including types of and limits to eligible credit protection shall be recognised for the purposes of the first sub-paragraph with the purpose of ensuring that credit risk mitigation techniques do not fail when risks materialise so that there can be effective recovery of credit protection.	

Or. en

Justification

There is no reason why credit mitigation should be acknowledged to a lesser extent for a separated entity than for other institutions when it comes to rules for large exposures. This article is thus suggested to be deleted.

Amendment 59

Proposal for a regulation
Article 18 – paragraph 1 – subparagraph 1

Text proposed by the Commission	*Amendment*
When a competent authority has made a decision in accordance with Article 10(3) that a core credit institution cannot carry out certain trading activities, the core credit institution or, where appropriate, its EU parent shall submit a separation plan to the competent authority within 6 months from the date of the decision referred to in the second sub-paragraph of Article 10(3).	When a competent authority has made a decision in accordance with Article 10(3) that a core credit institution cannot carry out certain trading activities, ***and has been specifically required to separate these activities,*** the core credit institution or, where appropriate, its EU parent shall submit a separation plan to the competent authority within 6 months from the date of the decision referred to in the second sub-paragraph of Article 10(3).

Or. en

Justification

The suggested change is introduced in order to create consistency with the suggested changes in Article 10.

Amendment 60

Proposal for a regulation
Article 19 – paragraph 2

Text proposed by the Commission	*Amendment*
2. When carrying out the assessment in accordance with Article 9 and when requiring the core credit institution not to carry out certain activities in accordance with Article 10, the competent authority shall take into account any ongoing or pre-existing resolvability assessments carried	2. When carrying out the assessment in accordance with Article 9 and when requiring the core credit institution not to carry out certain activities in accordance with Article 10, the competent authority shall take into account any ongoing or pre-existing resolvability assessments carried

out by any relevant resolution authority pursuant to ***Article 13*** and ***13(a)*** of Directive [BRRD].	out by any relevant resolution authority pursuant to ***Articles 15*** and ***16*** of Directive ***2014/59/EU*** [BRRD]. ***A finding by the relevant resolution authority that there are no substantive impediments to resolvability shall not in itself be deemed sufficient indication that the conclusions referred to in Article 10(3) is not justified.***

Or. en

Amendment 61

Proposal for a regulation
Article 19 – paragraph 3

Text proposed by the Commission	*Amendment*
3. The competent authority shall cooperate with the relevant resolution authority and exchange relevant information that is deemed necessary in carrying out its duties.	3. The competent authority shall cooperate with the relevant resolution authority and exchange relevant information that is deemed necessary in carrying out its duties***, including the list of institutions that fall within the scope of this regulation***.

Or. en

Amendment 62

Proposal for a regulation
Article 19 – paragraph 4

Text proposed by the Commission	*Amendment*
4. The competent authority shall ensure ***that*** measures imposed pursuant to this Chapter, are ***consistent*** with the measures imposed pursuant to Article 13(b) of Regulation (EU) No 1024/2013, Article 8(9) of Regulation (EU) No [SRM], ***Article*** 13 and 13(a), Articles 14 and 15 of Directive [BRRD] and Article 104 of	4. The competent authority shall ensure measures imposed pursuant to this Chapter, are ***compatible*** with the measures imposed pursuant to Article 13(b) of Regulation (EU) No 1024/2013, Article 8(9) of Regulation (EU) No [SRM], ***Articles*** 13 and 13(a), Articles 14 and 15 of Directive [BRRD] and Article 104 of Directive

Directive 2013/36/EU.	2013/36/EU.

Or. en

Amendment 63

Proposal for a regulation
Article 21

Text proposed by the Commission	*Amendment*
[...]	***deleted***

Or. en

Amendment 64

Proposal for a regulation
Article 22 – paragraph 1

Text proposed by the Commission	*Amendment*
1. For the purpose of Article 3(b)(ii), the calculation of the thresholds shall be based on the consolidated accounts of the EU parent.	1. For the purpose of Article 3(b)(ii) ***and Article 9***, the calculation of the thresholds shall be based on the consolidated accounts of the EU parent.

Or. en

Amendment 65

Proposal for a regulation
Article 22 – paragraph 2

Text proposed by the Commission	*Amendment*
2. For the purpose of Article 3(b)(iii), the calculation of the thresholds shall be based on the activities carried out in the Union.	2. For the purpose of Article 3(b)(iii) ***and Article 9***, the calculation of the thresholds shall be based on the activities carried out in the Union.

Or. en

Amendment 66

Proposal for a regulation
Article 22 – paragraph 3 a (new)

Text proposed by the Commission	*Amendment*
	3a. For the purpose of Article 3(1)(b), the calculation of thresholds for entities that have effected a concentration during the previous year shall for the two years prior to the concentration be based on the combined accounts of the merged entities.

Or. en

Amendment 67

Proposal for a regulation
Article 22 – paragraph 4 – subparagraph 1

Text proposed by the Commission	*Amendment*
By [OP insert the correct date by 12 months of publication of this Regulation], the competent authority shall identify credit institutions and groups that are subject to this Regulation in accordance with Article 3 and notify them immediately to the EBA.	By [OP insert the correct date by 12 months of publication of this Regulation], the competent authority shall ***annually*** identify credit institutions and groups that are subject to this Regulation in accordance with Article 3 and notify them immediately to the EBA.

Or. en

Amendment 68

Proposal for a regulation
Article 23 – title

Text proposed by the Commission	*Amendment*
Calculation of trading ***activities***	Calculation of trading ***related risk exposures and bailinable debt***

Or. en

Amendment 69

Proposal for a regulation
Article 23 – paragraph 1 – subparagraph 1

Text proposed by the Commission	*Amendment*
For the purposes of Article 3, trading ***activities*** shall be calculated as follows in accordance with the applicable ***accounting*** regime.	For the purposes of Article 3, trading ***related risk exposures*** shall be calculated as follows in accordance with the applicable ***regulatory*** regime.

Or. en

Justification

The measures suggested use well-defined and known regulatory definitions and stem from the prudential measures developed through CRDIV. They focus on the extent to which market risk and risks related to counterparty risk from derivatives expose a bank to risks, and compare that to the liabilities that are eligible to be included in MREL (although the buffers that could be used for bail-in and thus for loss absorption for a failing bank are larger than this).

Amendment 70

Proposal for a regulation
Article 23 – paragraph 1 – subparagraph 2 – introductory part

Text proposed by the Commission	*Amendment*
Trading ***Activities = (TSA + TSL + DA + DL)/2***, where:	Trading ***Related Risk Exposures = RM + RD + RCVA + DL***, where:

Or. en

Amendment 71

Proposal for a regulation
Article 23 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission	*Amendment*
(a) ***Trading Securities Assets (TSA***) ***are assets that are part of a portfolio managed as a whole and for which there is evidence of a recent actual pattern of short-term profit taking, excluding derivative assets***;	(a) ***Risk Exposure Amount for Market Risk (RM***) ***is the total risk exposure amount as calculated in Article 92, paragraphs 3b and 3c, of Regulation (EU) No 575/2013, where the own funds requirements are multiplied with a factor of 12.5 in order to achieve a risk exposure amount***;

Or. en

Justification

The first measure is of exposure to market risks in trading activities which takes into account all the relevant market risks (interest rate, foreign currency, equity and commodities risk) in the best way that the regulatory community has been able to come up with after 20 years of development of the market risk framework in the Basel Committee.

Amendment 72

Proposal for a regulation
Article 23 – paragraph 1 – subparagraph 2 – point b

Text proposed by the Commission	*Amendment*
(b) ***Trading Securities Liabilities (TSL***) ***are liabilities taken with the intent of repurchasing*** in the ***near term, part of a portfolio managed as a whole, and for which there is evidence of a recent actual pattern of short-term profit-taking, excluding derivative liabilities;***	(b) ***Risk Exposure Amount for Counterparty Risk in Derivatives (RD***) ***is the sum of the total risk exposure amount for counterparty risk for derivatives*** in the ***banking book, calculated in accordance with Part Three Title II of Regulation (EU) No 575, and the total risk exposure amount for counterparty risk in the trading book, as calculated in Article 92, paragraph 3f, of Regulation (EU) No 575/2013***

Or. en

Justification

The second one measures the credit risk stemming from exposures to counterparties from derivatives exposures, as they are measured in the prudential framework.

Amendment 73

Proposal for a regulation
Article 23 – paragraph 1 – subparagraph 2 – point c

Text proposed by the Commission	*Amendment*
(c) ***Derivative Assets (DA*** **)** ***are*** derivatives ***with positive replacement values not identified as hedging or embedded derivatives***;	(c) ***Risk Exposure Amount for Credit Valuation Adjustments (RCVA*** **)** ***is the total risk exposure amount for credit value adjustments for*** derivatives***, calculated in accordance with Article 92, paragraph 3d, of Regulation (EU) No 575/2013, where the own funds requirements are multiplied with a factor of 12.5 in order to achieve a risk exposure amount***;

Or. en

Justification

The third one is the risk related to deterioration of credit risk in derivatives, that was not at all measured in the capital requirements before the recent financial crisis, but that was recognised and became a new part of the capital requirements in CRDIV.

Amendment 74

Proposal for a regulation
Article 23 – paragraph 1 – subparagraph 2 – point d

Text proposed by the Commission	*Amendment*
(d) Derivative Liabilities (DL) are derivatives with negative replacement values not identified as hedging instruments.	***deleted***

Or. en

Amendment 75

Proposal for a regulation
Article 23 – paragraph 2

Text proposed by the Commission	*Amendment*
2. Assets ***and liabilities*** of insurance and reinsurance undertakings and other non-financial undertakings shall not be included in the calculation of trading ***activities***.	2. Assets of insurance and reinsurance undertakings and other non-financial undertakings shall not be included in the calculation of trading ***related risk exposures***.

Or. en

Amendment 76

Proposal for a regulation
Article 23 – paragraph 3 – subparagraph 1

Text proposed by the Commission	*Amendment*
EBA shall draft implementing technical standards to lay down the methodology for calculating the trading activities referred to in paragraph 1 taking into account the differences in the applicable accounting regimes.	***deleted***

Or. en

Justification

Since these measures are well defined in the prudential framework, there is no need for delegated acts relating to these measures.

Amendment 77

Proposal for a regulation
Article 23 – paragraph 3 – subparagraph 1

Text proposed by the Commission	*Amendment*
EBA shall ***draft implementing technical standards to lay down the methodology***	***For the purposes of Article 3, the total amount of bailinable debt*** shall ***be***

for calculating the trading activities referred to in paragraph 1 taking into account the differences in the applicable accounting regimes.	***calculated as the sum of the own funds of the institution in accordance with Regulation (EU) No 575/2013 and other liabilities being qualified as eligible for the minimum requirement of eligible liabilities as defined in Article 45 of Directive 2014/59/EU (the BRRD)***.

Or. en

Amendment 78

Proposal for a regulation
Article 23 – paragraph 3 – subparagraph 2

Text proposed by the Commission	*Amendment*
EBA shall submit those draft implementing technical standards to the Commission by [OP please introduce exact date 1 month from the day of publication of the Regulation.]	***deleted***

Or. en

Amendment 79

Proposal for a regulation
Article 23 – paragraph 3 – subparagraph 3

Text proposed by the Commission	*Amendment*
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.	***deleted***

Or. en

Amendment 80

Proposal for a regulation
Article 23 – paragraph 4

Text proposed by the Commission	*Amendment*
4. The Commission shall be empowered to amend, by means of delegated acts in accordance with Article 35, the components of trading ***activities*** referred to in points (a) to (***d***) of paragraph 1 of this Article to take into account changes in the applicable ***accounting*** regimes.	4. The Commission shall be empowered to amend, by means of delegated acts in accordance with Article 35, the components of trading ***related risk exposures*** referred to in points (a) to (***c***) of paragraph 1 of this Article to take into account changes in the applicable ***regulatory*** regimes.

Or. en

Amendment 81

Proposal for a regulation
Article 28 – paragraph 4 – subparagraph 1 – point b

Text proposed by the Commission	*Amendment*
(b) the disgorgement of the profits ***gained*** or losses ***avoided due to the breach in so far as they can be determined***;	(b) the disgorgement of the profits or losses ***which the competent authority estimates to have been gained or avoided due to the breach***;

Or. en

Amendment 82

Proposal for a regulation
Article 28 – paragraph 4 – subparagraph 1 – point d

Text proposed by the Commission	*Amendment*
(d) withdrawal ***or suspension*** of the authorisation;	(d) withdrawal of the authorisation;

Or. en

Amendment 83

Proposal for a regulation
Article 28 – paragraph 4 – subparagraph 1 – point g

Text proposed by the Commission	*Amendment*
(g) ***maximum*** administrative pecuniary ***sanctions of at least three times*** the amount of the ***profits gained or losses avoided because of the*** breach where ***those*** can be determined;	(g) administrative pecuniary ***penalties of up to twice*** the amount of the ***benefit derived from the*** breach where ***that benefit*** can be determined;

Or. en

Amendment 84

Proposal for a regulation
Article 28 – paragraph 4 – subparagraph 1 – point h

Text proposed by the Commission	*Amendment*
(h) in ***respect*** of a natural person, ***a maximum*** administrative pecuniary ***sanction of at least*** EUR 5 000 000 or in the Member States whose currency is not the euro, the corresponding value in the national currency on the date of entry ***to*** force of this Regulation;	(h) in ***the 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 the date of entry ***into*** force of this Regulation;

Or. en

Amendment 85

Proposal for a regulation
Article 28 – paragraph 4 – subparagraph 1 – point i

Text proposed by the Commission	*Amendment*
(i) in ***respect of*** legal ***persons, maximum*** administrative pecuniary ***sanctions of at least*** 10 per cent of the total annual turnover ***of the legal person according to***	(i) in ***the case of a*** legal ***person,*** administrative pecuniary ***penalties of up to*** 10 per cent of the total annual ***net*** turnover ***including the gross income consisting of***

the last available accounts approved by the management body; where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts according to Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income according to the relevant accounting regime according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

interest receivable and similar income, income from shares and other variable or fixed-yield securities, and commissions or fees receivable in accordance with Article 316 of Regulation (EU) No 575/2013 of the undertaking in the preceding business year.

Or. en

Amendment 86

Proposal for a regulation
Article 28 a (new)

Text proposed by the Commission	*Amendment*
	Article 28a
	6. In the event of a breach referred to in paragraph 1, the ECB, as a competent authority, may impose the sanctions laid down in Article 18 of Regulation (EU) No 1024/2013.

Or. en

Amendment 87

Proposal for a regulation
Article 29 – paragraph 1 – point d

Text proposed by the Commission	*Amendment*
(d) the importance of the profits gained or ***losses*** avoided by the person responsible for the breach, insofar as they can be	(d) the importance of the profits ***or losses which the competent authority estimates to have been*** gained or avoided by the person responsible for the breach, insofar

determined;	as they can be determined;

Or. en

Amendment 88

Proposal for a regulation
Article 34 – paragraph 1

Text proposed by the Commission	*Amendment*
The Commission shall, on a regular basis, monitor the effect of rules laid down in this Regulation in respect of the achievement of the objectives referred to in Article 1 and on the stability of the Union financial system as a whole, taking into account market structure developments as well as the development and activities of the entities regulated by this Regulation, and make any appropriate proposals. The review shall in particular focus on the application of the thresholds referred to in Article 3, the application and effectiveness of the prohibition foreseen in Article 6, the scope of activities referred to in Article 8 and the suitability of the metrics set out in Article 9. By 1 January 2020 and on a regular basis thereafter, the Commission shall, after taking into account the views of the competent authorities, submit to the European Parliament and to the Council a report, including the issues mentioned above, if appropriate accompanied by a legislative proposal.	The Commission shall, on a regular basis, monitor the effect of rules laid down in this Regulation in respect of the achievement of the objectives referred to in Article 1 and on the stability of the Union financial system as a whole, taking into account market structure developments as well as the development and activities of the entities regulated by this Regulation, and make any appropriate proposals. The review shall in particular focus on the ***appropriateness and*** application of the thresholds referred to in Article 3, the application and effectiveness of the prohibition foreseen in Article 6***, including the exemptions to the prohibition provided in the same Article***, the scope of activities referred to in Article 8 and the suitability of the metrics set out in Article 9. By 1 January 2020 and on a regular basis thereafter, the Commission shall, after taking into account the views of the competent authorities, submit to the European Parliament and to the Council a report, including the issues mentioned above, if appropriate accompanied by a legislative proposal.

Or. en

Amendment 89

Proposal for a regulation
Article 35 – paragraph 5

Text proposed by the Commission	*Amendment*
5. A delegated act adopted pursuant to Articles 6(6), 8(3), 10(5), 11(3), 12(2), 15(2), second sub-paragraph of Article 16, Article 23(4) and 27(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of ***2*** months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by ***2*** months at the initiative of the European Parliament or the Council.	5. A delegated act adopted pursuant to Articles 6(6), 8(3), 10(5), 11(3), 12(2), 15(2), second sub-paragraph of Article 16, Article 23(4) and 27(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of ***3*** months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by ***3*** months at the initiative of the European Parliament or the Council.

Or. en

EXPLANATORY STATEMENT

Europe is underinvested. The underinvestment of the Union can be estimated to between 400 and 700 billons euros annually compared to the situation before the crisis. It is a serious situation not only because it threatens jobs and growth but also financial stability.

Lack of modernisation and competitiveness as well as decreasing employment threatens the stability of public finances and undermines asset values. This combination could very well lead to a new financial crisis, but this time from an even weaker point of departure, as big parts of our economies have not recovered from the last financial crisis.

Without private investment, asset values will fall and undermine the ability of otherwise financially sound banks which are living up to new and substantially higher capital requirements. Modern financial crises have all been more or less characterised by falling asset values, in most cases related to retail financing of real estate, in combination with decreasing economic growth. The weak growth has been highly correlated to declining competitiveness, which in turn stems from insufficient financing of new commercial investments and production capacity.

So if banks are not able to finance commercial investments, retail lending to real estate becomes a systemic risk. This must be avoided in order to make Europe grow again. It must be done by making it possible for the banks of Europe to provide liquidity all over the Union. A well-functioning Capital Markets Union requires that the channels for financing growth and new jobs are open, and that investment in new industry and new businesses can be provided all over the union independent of the problems of Member States' public finances. Productive ideas and company development must be able to attract commercial investment, that is to say financing.

Your rapporteur's assessment is that this is the biggest challenge for the financial sector of Europe and that further legislation for the single financial market must consider this as a prime task.

Banks must now be able to live up to new requirements on capital and resolvability at the same time as they must be given the opportunity to provide capital and financing through securities markets, for instance through securitisations, and by the distribution of risks from traditional bank lending to market based financing. This means that banks should be allowed to bring liquidity to the single market for lending and financing of investments, through the provisioning of market making services to the securities market.

Universal banks are systemically important as they are, by acting cross borders, big enough to attract international capital and mobilise financial resources all over Europe. They are transforming capital into liquidity, irrespective in whatpart of the union they are active, in order to finance the investments that at the same time are spreading the risks for them.

Specialised banks will play an important role in making this possible, but they will not be sufficient. Increased dependence on them will not strengthen the stability in the financial sector, and a sole reliance on them would put important liquidity making at risk.

First of all, specialised banks have been more exposed to systemic shocks and falling asset values than diversified banks. As ECB notes in its report "EU Banking Structures" (September 2010) after the immediate crisis :"*Although both diversified and specialised banks*

(especially pure investment banks) experienced a decrease in net income or even losses, write-downs and recapitalisations during the crisis, diversified institutions have proven to be more resilient, as losses in some segments were recouped through alternative sources of revenue."

Recent financial crises as well as the one still ongoing have been caused by various factors, such as retail banking in respect of real estate, lack of diversification, dependence on short term financing and exposure to commercial real estate at falling values. Diversified banks have had better opportunities for distributing risks than specialised banks. Having more legs than one has meant being more resilient to crises.

Secondly, the European banking model has been developed for hundreds of years. It is developed in the framework of European financial markets, the business structure of Europe with a high level of SME´s, public pension schemes and regulated and supervised banks providing security for lenders and depositors. The US system has also been developed for more than hundred years and adopted to the different conditions of the US economy. Less reliance on universal banks will not mean a rapid emergence of new channels for financing, but rather a slow development of new institutions and lending, and thereby a decline in investment.

Thirdly, new financial legislation in EU has changed the landscape. Since the crisis we have put in place new rules and regulations that make the financial markets of 2014 quite different to the ones we had in 2009. EMIR, MIFID2, CRD4, DGS, BRRD, SSM, SRM as well as EBA. The abbreviations are many but symbolise a totally different architecture of the financial markets. Rules, supervision and a market responsibility that is real.

Lending and financing requires more core capital, more of bail-inable capital, tougher risk criteria and more efficient supervision as well as more prudent control of banks by investors. One can say, for better and for worse, that it has become more difficult to borrow money because it is more difficult to lend money. Higher security and stability provides long term growth opportunities but less financing in the short term. New regulatory steps must address this problem and the challenge of new systemic risks coming from underinvestment.

Increased stability must allow for increased financing of the European economy in the framework of the new rules and supervision we have gained. A development where an increasing share of financial intermediation takes place outside the new rules for capital, resolvability and supervision would clearly mean increased systemic risk in institutions which are just as systemically important as banks.

It is the interdependence and the risk exposure that defines the systemic risks, not the diversified banking model or a particular size of institution. The recent stress test points to this as well as our experiences from the crisis. It was not predominantly trading that caused it.

The proposal from the Commission aims to finalise the Single Rulebook by addressing systemic risk that we still are exposed to, in spite of new legislation. Your rapporteur welcomes this approach but has the view that it must be a risk based approach, that it must not lead to increased number of transactions and financing taking place outside the regulated and supervised parts of the financial sector. It must be implemented in a way that utilizes the legislations we have adopted recently and that has changed the landscape, that benefits from the stability we have gained in order to allow for the liquidity making and the capital markets we need, and that relates to the implemented legislations.

Systemic risks that we are exposed to in universal banks must be met by a risk based approach, not by deeming one business structure as a systemic risk when that is not the case and presuming that trading is more systemically risky than lending, which is not the case. At the same time we must secure that we are do not become more exposed to systemic risks coming from the interdependence of specialised banks, also being crucial parts in the banking system.

If there are systemic risks of universal banks which are not taken account of by CRD4 and BRRD, because they stem from an asymmetric composition of trading and retail, creating risks for depositors because of oversized or too risky trading business, then these should be met, not because it is trading, but because of the relevant risks but with the aim to tackle the lack of resolvability. We should above all make sure that taxpayers are not having to pay.

It is natural that this legislation should link to the BRRD in order to reach consistency with previous legislation and not to overlap or complicate.

The responsibility for competent authorities, as provided by BRRD, to evaluate and decide upon resolvability, is naturally linked to a decision on separation of trading activities that risk depositors' capital. Separation can be one tool, increased capital or reduced activities of risk can be others, as provided in the BRRD.

By linking the risk criteria to the resolvability of a bank it is natural to analyse the risk in comparison to the bail-inable capital, thereby focusing on the risks for bail in and the respect for the fundamental rule of BRRD that Governments or taxpayers should not bail out shareholders or investors. The level of bail-inable capital is a crucial parameter for judging the risks of trading. Resolvability must be a key for European banks and for the Single Rulebook, crucial for assessments regarding separation, increased capital or reduced risk exposure.

Your rapporteur would like to underline that in order to uphold the respect and the credibility of BRRD, and the requirement that no shareholder or investor shall live in the hope or presumption that someone else will save the bank, a universal bank provides highly credible perspectives. Banks depending only on depositors' capital must bail in depositors much earlier than universal banks, which threatens to create a systemic risk problem or a political problem hindering the presumed bail in.

It is important to state that there is nothing telling us that trading is more risky than lending, rather the opposite. Trading is a way of keeping assets liquid and to transform capital to lending and to distribute the risks of lending. Trading in covered bonds or options in transparent markets is often more secure than lending to shopping galleries or office centres. Trading can be a necessary way of distributing and mitigating risks, which means that the risks for deposits and financial stability diminishes.

By having a risk-based approach, addressing the systemic risks rather than structures or activities, be it lending or trading, we can achieve an even more stable financial system and lay the ground for a dynamic Capital Markets Union providing Europe with the liquidity needed for investments and growth that is still another precondition for financial stability. This stability is one of our most important challenges in order to get European Union back as a growing and competitive region of the world, with jobs and prosperity.