

Comments

Regarding ESAs Consultation Paper "Draft joint Guidelines on the system established by the European Supervisory Authorities for the exchange of information relevant to the assessment of the fitness and propriety of holders of qualifying holdings, directors and key function holders of financial institutions and financial market participants by competent authorities"
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The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks.

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Comments regarding ESAs Consultation Paper JC/2022/76

We consider the exchange of information by means of a database (ESAs Information System) envisaged in the consultation paper to be extremely problematic, both for formal and substantive legal considerations. It should therefore be dispensed with. In detail:

(1) The draft guidelines inadmissibly interfere with the distribution of responsibilities between the ESAs and the competent national authorities through two aspects:

- The envisaged obligation to consult the database violates the sole responsibility of the national authorities for the respective suitability assessment procedure, which is also confirmed by the draft guidelines.
- Especially in cases of a negative result or a withdrawal of an application in an early assessment procedure, there will be a de facto binding effect of the earlier procedure, even if the draft guidelines explicitly reject such a binding effect in recital 11.

(2) The stated legal basis (Art. 31a in conjunction with Art. 16 (1) of the Founding Regulation; for the EBA: EU Regulation 1093/2010) does not cover the establishment of such an elaborate, centrally organised database from a substantive law point of view either.

The database is not necessary to ensure efficient supervision within the meaning of Article 16 (1) of the Founding Regulation. Equally efficient options are available that are less costly and more data-efficient. Automated, standardised enquiries at the deposited contact points ("basic address book", option A on p. 17, accompanying document) within the framework of a decentralised solution, for example, would not be costly and would be at least as efficient.

It is up to the competent authority to decide whether data should be matched in a suitability assessment procedure. There will only rarely be a reason to do this, since in the vast majority of cases there is no question of another authority having jurisdiction that was established in the past. The vast majority of data is collected even though it will most likely never or only very rarely be needed by other competent authorities.

The use of the data that can be obtained through the management of the database by the ESAs is only rudimentarily hinted at. Recital No. 8 (p. 6 of the draft guidelines) refers to statistics that are to be derivable from the use of the database. The draft guideline text itself, however, does not contain any further explanations on this. There is therefore a danger here that the ESAs want to derive certain findings from the database, which in turn could be used as the basis for further measures. Therefore, it must be regulated in the text of the guidelines themselves (and not in the announced operating regulations) - also for reasons of data protection law - with which purpose, to what extent and on the basis of which legal basis the ESAs themselves want to access and evaluate data.

If the guidelines are published despite our concerns, we see the need to make adjustments. For example, it should be mandatory for the data subject to be informed when a request is made for personal data. Furthermore, it would be necessary to include an obligation in the guidelines that queries of the database may only be made for a legitimate reason and must be recorded. Finally, it should be ensured that sufficient standards for data security are set.