Klarna

POSITION PAPER
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Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders

Klarna AB (publ), (Klarna), appreciated the possibility to attend the public hearing on 5 January 2017 and welcomes the opportunity to comment upon the draft guidelines on assessment of the suitability of members of the management body and key function holders, (draft Guidelines).

About Klarna

Klarna was founded in Stockholm in 2005 with the idea to simplify buying. Today, we're one of Europe's fastest growing companies. In 2014 we joined forces with SOFORT and formed Klarna Group, the leading European payment provider.

Klarna Group has more than 1,400 employees and is active on 18 markets. We serve 45 million consumers and work with 65,000 merchants.

Turnover 2015 for the Klarna Group was 297 MEUR

Klarna AB (publ) is a Swedish credit market company with a license to conduct financing business under the supervision of the Swedish Financial Supervisory Authority, (SFSA).

In general

Klarna opposes the introduction of an ex-ante assessment

Initially the Klarna wants to highlight that we oppose the introduction of a requirement for an ex-ante assessment. There are several reasons for this, please see our comments on the subject under question 12-15 in the document.

As was presented at the public hearing, a reason behind the introduction of an ex-ante assessment is that competent authorities in some Member States may have problems with replacing unsuitable members of the management body appointed by the institution. However, deficiencies or weaknesses in national law should primarily be addressed in the context of national law. The CRD IV is clear in this area, article 102 and 104, and enables competent authorities to take necessary measures when an institute does not meet the requirements in the directive.

Corporate governance structures

Klarna fully agrees with the EBF´s position that the draft Guidelines do not take sufficient account of the different corporate structures within the EU. The draft guidelines are too detailed and do not provide

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sufficient flexibility which makes them very difficult, and to some extent impossible to apply in a unitary board structure. It must be considered that in a unitary board structure the board´s decisions are made collectively, and that it hence is not logical to impose strict requirements on individuals.

Additional detailed requirements risk being counterproductive

Klarna supports the Swedish Bankers' Association's (SBA) standpoint regarding that additional detailed requirements risk being counterproductive.

Q1: Are there any conflicts between the responsibilities assigned by national company law to a specific function of the management body and the responsibilities assigned by the Guidelines to either the management or supervisory function?

On a general level, there must be a clear difference in the competence requirement for members of the management body in its supervisory function – according to Swedish law the board of directors – and members of the management body in its management function, and a greater level of flexibility allowing for the proper implementation of the draft guidelines notwithstanding requirement as to structure etc. imposed under national law.

The Swedish corporate governance structure lies somewhere in between the Anglo-American and the continental models in several respects. The Swedish Companies Act stipulates that companies must have three decision-making bodies in a hierarchical relationship to one another: the Shareholders´ Meeting, the Board of Directors and the Chief Executive Officer. In practice the CEO usually carries out his duties together with a management team. There must also be a controlling body, the statutory auditor, which is appointed by the shareholders´ meeting. According to the Swedish Corporate Governance Code the shareholders´ meeting´s decisions on election and remuneration of the Board of Directors are to be prepared in a structured, clearly stated process governed by the shareholders (through the Nomination Committee) that provides conditions for well-informed decision-making. The task of the Nomination Committee is among others to specify the duties and profile of Board members, including the chairman, appropriate to the company's operations and in line with the articles of association of the company and the interest of all shareholders. If the shareholders decide to appoint a Nomination Committee, the committee constitutes a body under the Shareholder´s Meeting and is thus not a committee under the Board of Directors.

The Swedish company law does not impose a requirement for institutions to appoint a "management team" and such requirement cannot be imposed by draft Guidelines. As regards individual requirements imposed on members of the management body it should be stressed that under Swedish law the board is a body where decisions are taken collectively, no such authority is placed at individual level with the directors. Against this background, it is not logical to impose stringent requirements on individual positions as these rules should be imposed on the collective forum of the board, please see e.g. rule 40 that Klarna suggests should be deleted.

Q2: Are the subject matter, scope and definitions sufficiently clear?

Increased detailed suitability requirement beyond those already applicable regulations will create very complex appointment structures for financial institutions. The difficulties are also associated with the fact that the requirements are to be found in different regulations both at national and EU level. Even though

the Klarna appreciates harmonization we believe it is essential that a cumulative impact assessment is made of the overall regulatory framework.

It should also be explained whether there is an intended difference between "the collective suitability of the management body" in rule 25 and "the collective suitability of the members of the management body" in rule 26?

Q3: Is the scope of assessment of key function holders by CRD-institutions appropriate and sufficiently clear?

It is unclear how the requirement in rule 30 c. should be interpreted and it must be clarified.

Q4: Do you agree with this approach to proportionality principle and consider that is will help in the practical implementation of the guidelines?

The section on proportionality should be moved to the beginning clearly indicating that it is applicable to all of the guidelines.

Q5: Do you consider that a more proportionate application of the guidelines regarding any aspects of the guidelines could be introduced?

The part on proportionality only refers to institutions. It should be clarified how the proportionality principle relates to other entities in consolidating situations.

Klarna thinks that the level of detail of the draft Guidelines is too much.

Q6: Are the guidelines with respect to the calculation of the number of directorships appropriate and sufficiently clear?

Even if Klarna believes the draft guidelines are sufficiently clear, we believe they go beyond the scope of the underlying acts and the actual objective with imposing requirement on the assessment of suitability.

Regarding rule 39 j. it will not be possible to find appropriate and relevant benchmarking on time commitment. Further, it is not reasonable to record in writing the expected time commitment for each position within the Board, rule 40. Focus should be on the competence of the Board as a whole. There is no need for such detailed requirement and it is not effective to regulate time commitment in hours. The expected time commitment will differ from time to time depending e.g. on the company´s development phase and business activities.

Q7 Are the guidelines within Title II regarding the notions of suitability appropriate and sufficiently clear?

Klarna finds it very difficult to assess what constitutes "independence of mind" despite that the criteria are set out in rule 75.

Further, data protection requirements have to be considered as to how and to what extent information regarding an assessed individual may be collected and stored. Alignment is needed with coming requirements in the GDPR.

What does political influence or political relationship mean? Clarifications are needed.

Klarna supports SBA's suggestion that Annex II is deleted since it represents an example of the overzealous attempt to regulate areas which should be left for institutions to judge and develop.

In addition, too detailed requirements will lead to a situation where an assignment as a Board member more or less will become resemble to an ordinary employment contract.

Q8: Are the guidelines within Title III regarding the Human and financial resources for training of members of the management body appropriate and sufficiently clear?

The requirements in rules 84 and 85 must be read in the light of rules 59 to 62 and since the requirements are so extensive it may be difficult to meet them in six months´ time. The same holds true with regard to rule 83, i.e. the one-month period for induction. It will be difficult to provide a sufficiently comprehensive induction within such a short time span.

Q9: Are the guidelines within Title IV regarding diversity appropriate and sufficiently clear?

It may be difficulties in meeting the requirements on suitability and at the same time meet the requirement on diversity. If problems should occur, it must be clear which requirements that prevails.

Klarna would like to stress that in Sweden candidates for management body positions (at least in the supervisory function) are not typically recruited among staff why this subparagraph is not logical.

Q10: Are the guidelines within Title V regarding the suitability policy and governance arrangement appropriate and sufficiently clear?

Klarna supports SBA's answer to this question.

Q11: Are the guidelines within Title VI regarding the assessment of suitability by institutions appropriate and sufficiently clear?

Klarna supports SBA's answer to this question.

Q12-15: Are the guidelines with regard to the timing (ex-ante) of the competent authority´s assessment process appropriate and sufficiently clear, etc.?

Klarna strongly opposes the introduction of a requirement for an ex-ante assessment. Overall there has not been presented a concreate and convincing rational for changing the existing regime. On the contrary, there are good reasons to maintain a system with an ex-post assessment.

Furthermore, Klarna supports SBA's answer to this question. In addition we would like to add the following:

Klarna sees an extreme problem with the requirement for an ex-ante assessment by the competent authorities (CA) having to be performed and that a decision has to be taken before the appointment of

members of the management body, unless duly justified reasons for an ex-post assessment exist. In the Swedish corporate governance model it is the shareholders that elect the Board members at the general meeting. In accordance with the Swedish Companies Act the term of office for a Board member is one year as a general rule and this is mandatory for listed companies according to the Swedish Code on corporate governance.

This problem is further enhanced by the long handling time at the CA. The proposed three or four month period, to be determined by the CA, for the assessment which can be suspended when additional information or documentation is needed is way too long. It is Klarna's experience that the Swedish CA always would ensure the longest possible handling time for its decision. This would in practice force Swedish credit institutions to always have to have multiple suitability assessments on-going at the CA for potential Board members that can be elected at the general meeting. It would also be impossible for credit institution to know when to notify to a general meeting and there are legal requirements governing this. And what happens if a Board member resigns on his or her own accord due to e.g. personal reasons or exceeding the numerical limitations of directorships to be held at the same time?

If possible, this ex-ante assessment is even further enhanced by the proposal not having to give written decisions in all cases. This would leave the credit institutions hanging for as long as six months.

Klarna thinks that the ex-ante assessment proposal is not neutral to the corporate governance model chosen in different member states. Furthermore, it is our experience that credit institutions (in Sweden) always want to elect suitable board members. It would be detrimental to the reputation of the credit institution if a board member was found not to be suitable by the CA. We question whether credit institutions in member states with the same willingness to elect suitable management body members should be punished in order to get to those credit institutions/member state that don't. Klarna strongly advises the EBA to reconsider this proposal and leave it to the CA to implement ex-ante or ex-post assessment processes. Or at least make it clear that in Member States that have corporate governance models where the term of office is one year is a duly justified reason for an ex-poste assessment. Furthermore, Klarna strongly advises the EBA to reconsider this and make it mandatory for the CAs to give written decisions in all cases.

Sincerely yours,

Camilla Wahlstedt
Senior Compliance Officer