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European Banking Authority (EBA)

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Via Web-Upload

Consultation Paper – Draft Guidelines on internal governance under
Directive (EU) 2019/2034¹

EBA/CP/2020/27 of 17 December 2020

Dear Sir, dear Madam,

the Bundesverband der Wertpapierfirmen e.V. (bwf) is a trade association promoting the common professional interests of securities trading firms, market makers and investment firms with various other business models throughout Germany. In this capacity, we expressly welcome the possibility to comment on EBA's Consultation Paper – Draft Guidelines on internal governance under Directive (EU) 2019/2034, whereby, we would like to restrict our comments to some general remarks.

Copy & paste exercise

EBA, under the mandate of Article 26(4) of Directive 2019/2034/EU², has presented very detailed and comprehensive Draft Guidelines on internal governance. However, we think that EBA clearly overshoots the target by presenting Draft Guidelines for the internal governance process of investment firms in form of a 47 pages document which thereby shows exactly the same volume and level of complexity as the Guidelines on internal governance for credit institutions and investment

¹ URL: <https://www.eba.europa.eu/calendar/consultation-guidelines-internal-governance-investment-firms>

² Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (Text with EEA relevance), URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L2034>

your reference
EBA/CP/2020/27

your message of
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firms under the CRR/CRD regime.³ In fact it does not only read like a piece of banking regulation but it is in large parts the result of a copy & paste exercise from the above mentioned guidelines under CRR/CDR. In other words, the Draft Guidelines seem to be “*selling old wine in new skins*”.

As a result, any tangible facilitations compared to the current regime are hardly discernible. Accordingly, we think that the overall approach is not in line with the guiding legislative intent of establishing a more simplified, proportionate regime for investment firms.

Original legislative objective

In this context, we think it is worthwhile to remember a few considerations from the original legislative proposal:

“A more suitable prudential and supervisory framework with lower compliance costs for investment firms should help (i) improve the overall conditions for businesses; (ii) boost market entry and competition in the process; and (iii) improve investors’ access to new opportunities and better ways of managing their risks.”⁴

“Investment firms that are SMEs are expected to be among the main beneficiaries. A more proportionate and appropriate prudential framework for them should help improve the conditions for conducting business, and barriers to entry should decrease. For example, streamlining the onerous reporting framework should reduce administrative burdens and compliance costs for SMEs, including innovative firms seeking to grow through digital means.”⁵

Measured against this demand, the Draft Guidelines, in our view, do not seem to be fit for purpose, because they do not seem suitable to reduce administrative or compliance costs in a substantial way, simply because to a large extent, they simply transfer the existing operational requirements for credit institutions to non-systemically important investment firms.

³ Guidelines on internal governance, EBA/GL/2017/11, 21/03/2018, URL:

https://www.eba.europa.eu/sites/default/documents/files/documents/10180/2164689/531e7d72-d8ff-4a24-a69a-c7884fa3e476/Guidelines%20on%20Internal%20Governance%20%28EBA-GL-2017-11%29_EN.pdf?retry=1

⁴ Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the prudential supervision of investment firms and amending Directives 2013/36/EU and 2014/65/EU COM/2017/0791 final - 2017/0358 (COD), p 5, URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017PC0791&from=EN>

⁵ Ibid, p. 10

Readability and redundances

From our perspective, which is mainly the perspective of “class 2” investment firms, the proposed text and the provisions formulated therein, not only remain overly detailed but the understanding of the text is further complicated by numerous abstract references, which are not sufficiently substantiated in terms of content. This may seem expedient from a text-economy point of view, if the target group consists exclusively of lawyers already familiar with the subject matter but significantly reduces the readability from a practitioner’s point of view. We therefore suggest, that at least where scope and subject of a chapter are defined, the formal references should be supplemented by a more comprehensive explanation. E.g. Paragraph 5 of the Draft Guidelines could be amended as follows:

“These guidelines specify the ~~internal governance~~ arrangements, processes and mechanisms for Internal governance, transparency, treatment of risks and remuneration, that investment firms that are subject to Directive 2019/2034/EU8 must implement in accordance with Section 2 of Chapter 2 of Directive 2019/2034/EU in order to ensure effective and prudent management of the investment firms.”

Furthermore, we think that the readability could be further increased and the lengthiness of text reduced, if EBA could check the Draft Guidelines again for possible redundancy of content which can be found e.g. in Paragraphs 17 & 18 or Paragraphs 143 & 145.

And finally, we kindly ask EBA again to re-evaluate, whether the overall level of detail and complexity could not be further reduced, in order to create a leaner set of Guidelines compared to its equivalences under the CRR/CRD regime, which would better reflect the original legislative objective of a more proportionate regime for investment firms.

Yours sincerely,

Michael H. Sterzenbach
Secretary General