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24 January 2019

Subject: Request for revised deadlines in the Investment Firms Regulation (IFR) / Investment Firms Directive (IFD) for the submission of draft technical standards

Dear Sirs,

We are writing to you to reaffirm the EBA's commitment to the significant role that the upcoming IFD¹ and IFR² will attribute to the Authority. It is our understanding that legislators will start discussions shortly with a view of finalising the IFR/IFD. Consequently, it appears an opportune time for the EBA to provide some technical suggestions related to the technical standards' development process.

¹ 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, 2017/0358 (COD) of 20 December 2017.

² Proposal for a Regulation of the European Parliament and of the Council on the prudential requirements of investment firms and amending Regulations (EU) No 575/2013, (EU) No 600/2014 and (EU) No 1093/2010, 2017/0359 (COD) of 20 December 2017.

The significant workload and the considerable resources constraints impede us to deliver all the mandates within the deadline foreseen in the European Commission's proposal, the EU Parliament's report of September 22 and the Council report of January 7, which are often set to 9 months after the entry into force of those regulations. While the EBA is fully committed to accomplishing its tasks within the legal deadlines foreseen, the compressed timeline risks compromising the quality of all regulatory products. For the prudential requirements for investment firms, not only the EBA's relevant committees and subgroups, but also ESMA and national competent authorities that are prudential supervisors of investment firms need to be consulted during the development process. Therefore, the EBA recommends reviewing the deadlines for the mandates into three different groups with submission dates of respectively 12, 18 and 24 months after the entry into force of the IFR and IFD.

When assessing the feasibility of the deadlines set out in the proposals, the following elements were taken into account: a) the need for the investment firms to have time to implement the new requirements; b) the need for the regulators to be in a position to assess the effectiveness of the new prudential regime and to review the appropriateness of existing guidelines; c) the need for the Member States to translate into national laws the requirements of the Directive and any related guideline; and d) the need for the competent authorities to perform an effective supervision. Overall, this prioritisation reflects an EBA view on the optimal sequencing of the proposed regulatory work. Should legislators have a different view, EBA will naturally take this into account, but would ask legislators to explicitly reflect this prioritisation in the timelines.

Furthermore, since the review of all the existing guidelines may be an onerous task, the EBA would like to recommend adding an explicit mandate in the regulation for this review with a deadline of 3 years after its entry into force.

A detailed recommendation on how each deadline could be reviewed and set is included in the annex to this letter. In addition, it is worth noting that some of the mandates do not have an explicit deadline in the current proposals, because they have to be preceded by the development of the relevant standards, the implementation of the requirements on the industry stakeholders' side and they may require competent authorities and the EBA to upgrade some IT infrastructure. Given that it is difficult to foresee the complexity of the implementation of these mandates before the relevant regulatory requirements are finalised, the EBA recommends keeping those mandates in the IFR/IFD as they are proposed, i.e. without an explicit deadline.

Finally, it is worth recalling that mandates requiring the development of 'joint' regulatory products imply a very cumbersome approval process across the ESAs. Furthermore, the dependencies that other technical standards may have on joint products may lead to severe delays in the finalisation of the standards. Therefore, as EBA recommended in the past, it is advisable that joint regulatory products are limited to exceptional circumstances. Concerning the IFR/IFD, the EBA is of the opinion that each mandate may be assigned to a single authority in the lead with the mandate, and by keeping the other relevant authorities in consultation or close collaboration is sufficient to ensure the quality of the technical standards, as the ESAs have already established good working practices in this regard.

Should you have further questions related to these technical proposals, the EBA stands ready to provide further clarification.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'Jo Swyngedouw', is positioned below the text 'Yours sincerely,'.

Jo Swyngedouw
Interim Chairperson

Cc: Martin Merlin, Director Dir D, Regulation and prudential supervision of financial Institutions, DG FISMA
Dominique Thienpont, Legal Counsellor to Dir D, DG FISMA
Didier Millerot, Banks and Financial Conglomerates Dir D2, DG FISMA
Roberto Gualtieri, Chair of ECON
Jeppe Tranholm-Mikkelsen, Secretary-General, the Council of the EU
Magdalena Ionita, Chair IFR CWP, Permanent Representation of Romania to the EU

Annex: list of mandates under IFD and IFR and proposed deadlines

Regulation	Art.	Par.	Mandate summary	Deadline	EBA recommended deadline
IFD	4a	-	RTS on the criteria for subjecting certain investment firms to the CRR	9 months after EIF	12 months after EIF
IFD	11	6	RTS on information exchange between CAs in different member states	6 months after EIF	2 years after EIF
IFD	11	7	ITS to establish standard forms, templates and procedures for the supervisory information sharing	6 months after EIF	2 years after EIF
IFD	19	1	EBA Central database and website with links to administrative penalties	No deadline	No deadline
IFD	23	6	RTS to specify the method for calculating the eligibility criteria for small and non-interconnected investment firms (AUM, COH, Balance sheet and gross revenue)	9 months after EIF	12 months after EIF
IFD	24	4	RTS to specify the content of the application of governance arrangements	12 months after EIF	18 months after EIF
IFD	28	4	RTS to specify appropriate criteria to identify the categories of individuals whose professional activities have a material impact on the investment firm's risk profile	9 months after EIF	18 months after EIF
IFD	30	6	RTS to specify instruments for variable remuneration convertible into CET1	9 months after EIF	18 months after EIF
IFD	32	1	Annual report on remuneration trends and practices	No deadline	No deadline
IFD	32	3	GL on the application of sound and gender neutral remuneration policies	No deadline	No deadline
IFD	32	4	GL on supervisory information on high earners	No deadline	No deadline
IFD	32a	-	Report and (if appropriate GL) of technical criteria related to exposures with substantial ESG for SREP	2 years after EIF	2 years after EIF
IFD	34	4	GL on benchmarking of internal models	No deadline	No deadline
IFD	37	6	RTS on Pillar 2 add-ons	9 months after EIF	18 months after EIF
IFD	38a	6	GL on liquidity risk	No deadline	No deadline
IFD	41	2	GL on procedures and methodologies for the SREP	No deadline	No deadline
IFD	44	8	RTS on the conditions for the establishment of a college of supervisors	9 months after EIF	2 years after EIF

Regulation	Art.	Par.	Mandate summary	Deadline	EBA recommended deadline
IFD	53	4	ITS on supervisory disclosure	9 months after EIF	12 months after EIF
CRD	8a	4a	RTS on the information to be provided for the authorisation of credit institution RTS on the calculation of the thresholds to be a credit institution	January 1st 2019	18 months after EIF
IFR	7	4	RTS on prudential consolidation	6 months after EIF	12 months after EIF
IFR	9	2 (e) (v)	Monitoring and publication of eligible own funds instruments	No deadline	No deadline
IFR	13	4	RTS to specify the calculation of the fixed overheads requirement RTS to define the notion of a material change	9 months after EIF	12 months after EIF
IFR	15	5	RTS to specify the methods for measuring the K-factors and adjusting their coefficients RTS on the definition of segregated account RTS the on the inclusion of advice in K-AUM	No deadline	12 months after EIF
IFR	23	2	RTS to specify the calculation of the amount of the initial margin for the calculation of K-CMG.	9 months after EIF	12 months after EIF
IFR	43	2a	GL to specify what constitutes exceptional circumstances for the purpose of reducing the amount of liquid assets held.	No deadline	No deadline
IFR	48	2	RTS to specify templates for own funds disclosures	9 months after EIF	18 months after EIF
IFR	51a	3	RTS to specify templates for investment policy disclosures	9 months after EIF	18 months after EIF
IFR	52	3	ITS on supervisory reporting	9 months after EIF	12 months after EIF
IFR	53	4	RTS on the information related to the thresholds for credit institutions	January 1st 2019	12 months after EIF
IFR (EBA proposal)	Could be included, for instance, in Article 59 IFR		By [3 years from the date of entry into force of this Regulation], the European Banking Authority shall carry out a review of all the existing EBA guidelines applicable to investments firms.	-	3 years after EIF

Note: The list contains all mandates identified by the EBA in respectively the Commission proposal, the subsequent versions developed by European Parliament and European Council.