Consultation Paper EBA on Draft Regulatory Technical Standards On disclosure of investment policy by investment firms under Article 52 of Regulation (EU) 2019/2033 on the prudential requirements of investment firms

Eumedion's online response

Question 1: Are the instructions, tables and templates clear to the respondents?

Art. 52(1)(a) IFR requires disclosure of the proportion of voting rights attached to the shares held directly or indirectly by the investment firm, broken down by Member State and sector. As correctly stated in the consultation paper (p. 15), the exact meaning of 'held indirectly' is not specified further in the IFR. According to the consultation paper the term should not only include shares held by subsidiaries, but also (among other things) shareholders represented by investment firms at shareholders' meetings. With respect to the latter we call EBA to clarify that this term is limited to the situation where the investment firm can exercise the voting rights at its discretion in the absence of specific instructions from the shareholder (i.e. discretionary asset management agreements). And that shareholders are not represented by investment firms if the voting rights are retained by the shareholders (i.e. if the investment firm is not authorized by the shareholders to vote on their behalf or where the firm only executes voting instructions on behalf of a shareholder).

Also the method of calculation of the 5% threshold should be clarified in order to avoid differing practices between the Member States which is burdensome for large institutional investors who – for reasons of diversification – invest in many listed companies incorporated in various Member States. It should for example be clarified whether the percentage should be rounded or not, how voting rights attaching to shares which are lodged as collateral should be treated and how securities lending agreements should be treated (voting rights attaching to shares that have been lent by the investment firm should in our view be excluded since the legal title and the voting rights have been passed on to the borrower/buyer).

The draft table on explanation of the votes (IF IP2.03) requires among others things that an explanation is provided of any material change in the rate of approval. According to annex II a short explanation shall be provided if the rate of approval has materially increased or decreased relative to the last disclosure, for instance, following a change in policy, strategy or outlook of the investment firm as a shareholder. This

requirement might overlap with the already existing requirements on the basis of SRD II. The aforementioned directive requires that institutional investors and asset managers shall, on an annual basis, publicly disclose an explanation of the most significant votes (comply-or-explain). It cannot be ruled out that institutional investors and asset managers as part of the explanation of the most significant votes also elaborate on a change in policy, strategy or outlook of the investment firm as a shareholder. In that case we believe that institutional investors and asset managers should be able to demonstrate that they comply with the requirement to provide an explanation on any material change in the rate of approval on the basis of IF IP2.03 by referring to their explanation of the most significant votes on the basis of SRD II. We advise to reflect this position in annex II in order to avoid overburdening investment firms with this exercise.

Question 2: Do the respondents identify any discrepancies between these tables, templates and instructions and the requirements set out in the underlying regulation?

Yes. Art. 52(1)(b) IFR requires large investment firms to disclose (among other things) a complete description of their voting behaviour and an explanation of the votes. The elaboration of this requirement in the proposed draft template on voting behaviour in resolutions by theme (IF IP2.04) cannot count on our support. Currently most large institutional investors already publicly disclose how they have voted their shares in investee companies, at an individual company level and per voting item. It will be very burdensome and time-consuming for those investors to (re) group the aforementioned information by theme. Notwithstanding the above art. 52(1)(b) IFR does not require that the voting behaviour is presented by theme, this article only requires that a complete description of the voting behaviour is published. For achieving the objective of investment policy disclosure, i.e. providing transparency to investors and the wider market participants on the influence of investment firms over the companies in which they hold shares, it is also not necessary that the information is presented by theme. We believe that the benefits of publishing voting behaviour by theme in terms of added value to investors and market participants are unclear, while the administrative burden and compliance costs for investment firms are quite evident. Against this background we strongly recommend to remove the proposed IF IP2.04 and the accompanying instructions.

Besides that, there are two other discrepancies. The first one relates to draft template IF IP2.05. The consultation paper (p. 16) correctly states that in draft template IF IP2.05 a broader interpretation of art. 52(1)(b) IFR is chosen. We disagree with that approach and are of the opinion that draft template IF IP2.05 should in line with art. 52(1)(b) IFR be limited to the disclosure of the ratio of approved proposals put forward by the administrative or management body of the company which the investment firm has approved. We refer to our answer to question 4. The second one relates to the interpretation of the term ‘held indirectly’ (art. 52(1)(a) IFR). As already mentioned above we are of the opinion that this term should be limited to the situation where the investment firm can exercise the voting rights at its discretion in the

absence of specific instructions from the shareholder (i.e. discretionary asset management agreements). We refer to our answer to question 1.

Question 3: Do the respondents agree that the new draft RTS fits the purpose of the underlying regulation?

No. It follows from recital 1 of the draft RTS that the objective of investment policy disclosure is to provide transparency to investors and the wider market participants on the influence of investment firms over the companies in which they hold shares. We support this underlying objective. To this end the draft RTS should be practicable, proportional and not impose unnecessary additional costs on investment firms. Those criteria are currently not met. The wording of art. 52(1) IFR does not require the level of detail that is proposed in the draft RTS and it is not explained in the consultation paper why this level of detail is needed. Eumedion believes that the draft RTS are too prescriptive in the following areas:

1) The proposed requirement to publish the proportion of in-person vote respectively the proportion of vote by mail or electronic vote used by the firm (IF IP2.01 and the accompanying instructions);
2) The proposed requirement to publish the number and percentage of general meetings in the scope of disclosure in which the investment firm has opposed at least one resolution during the past year (IF IP2.02 and the accompanying instructions);
3) The proposed requirement to publish voting behaviour in resolution by theme (IF IP2.04 and the accompanying instructions). We also refer to our answer to question 2; and
4) The proposed requirement to also publish information on the ratio of approved proposals put forward by shareholders (IF IP2.05 and the accompanying instructions). We refer to our answer to question 4.

We are of the opinion that the potential benefits in terms of enhanced transparency would probably not outweigh the efforts and costs required by large investment firms. Therefore we recommend to remove the aforementioned requirements from the draft RTS.

Furthermore, as already mentioned above we believe that the meaning of ‘held indirectly’ should be clarified. We refer to our answer to question 1.

Question 4: What is respondents view on whether template IF IP2.05 on the ratio of approved proposals should include separate information on the resolutions put forward by the investment firm itself?

We see no value in including separate information on resolutions put forward by the investment firm itself. Having this said we would like to take the opportunity to provide our view on the proposed scope of template IF IP2.05. Art. 52(1)(b) IFR requires large investment firms to disclose (among other things) information on the ratio of approved proposals put forward by the administrative or management body of the company which the investment firm has approved. In draft template IF IP2.05 (template on the ratio of

approved proposals) a broader interpretation of art. 52(1)(b) IFR is chosen. Not only the percentage of resolutions put forward by the administrative or management body that are approved by the investment firm should be published but also the percentage of resolutions put forward by shareholders that are approved by the firm. The consultation paper (p. 16) states that in order to show a comprehensive picture of investment firms' voting behaviour it would be crucial that they also explain how they have voted on proposals put forward by shareholders so that stakeholders are able to understand whether the ratio of approved proposals may be different depending on who puts them forward. We disagree with that opinion and the proposal to choose a broader interpretation of art. 52(1)(b) IFR cannot count on our support. In practice shareholder resolutions differ from each other in terms of quality (e.g. a poorly drafted, vague climate resolution is very different from a resolution to dismiss the entire board). Against that background we believe that the publication of a percentage of resolutions put forward by shareholders that are approved by the investment firm does not say anything at all about the investment firms' voting behaviour. Besides that as already mentioned above, currently most large institutional investors already publicly disclose how they have voted their shares in investee companies, at an individual company level and per voting item. It will be very burdensome and time-consuming for those investors to (re) group the aforementioned information in order to comply with the proposed requirement. Above all art. 52(1)(b) IFR itself does not require that investment firms also disclose information on the ratio of approved proposals put forward by shareholders which the investment firm has approved. We are of the opinion that the benefits of publishing a percentage of resolutions put forward by shareholders that are approved by the investment firm in terms of added value to investors and market participants are unclear, while the administrative burden and compliance costs for investment firms are quite evident. Against this background we are of the opinion that draft template IF IP2.05 should in line with art. 52(1)(b) IFR be limited to the disclosure of the ratio of approved proposals put forward by the administrative or management body of the company which the investment firm has approved.

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