

Discussion Paper on the Call for advice on the investment firms prudential framework

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1. - Information Note

Article 60 of Regulation (EU) 2019/2033 (IFR) and Article 66 of Directive (EU) 2019/2034 (IFD) mandate the Commission to submit a report to the Council and to the Parliament regarding multiple aspects of the IFD and IFR that may include a legislative proposal to amend the prudential framework applicable to investment firms.

On 1 February 2023 the Commission submitted a Call for Advice (CfA) to the EBA and ESMA aimed at covering the elements mentioned in those two articles. The answer to the CfA should be submitted to the Commission by 31 May 2024.

The Commission is seeking advice from the EBA and ESMA on the following areas: a) Categorisation of investment firms including the conditions to qualify as small and non-interconnected investment firms and the conditions to qualify as credit institutions. b) The adequacy of the IFR/IFD prudential requirements, including the scope of K-factors, on prudential consolidation and liquidity requirements. c) Interactions with the CRR/CRD, implications of the adoption of the banking package, especially on the application of the market risk framework, variable remuneration and investment policy disclosure. d) Future proofing IFR/IFD regime, in particular with reference to the impact of crypto-assets to investment firms activities as well as UCITS/AIF. e) Considerations on the risk related to ESG factors. f) Specific considerations on commodity and emission allowance dealers and on energy firms.

Furthermore, the Commission expects the EBA and ESMA to assess the impact of the proposed changes against the current framework, in terms of own funds, requirements, operational and administrative costs incurred by Investment firms, clustered with respect to the classes of Investment firms, size, levels of consolidation, geographical location and activities.

EBA and ESMA favour a public discussion and is therefore issuing this discussion paper. EBA is of the overall opinion, that the current framework reaches the original general objectives, providing a robust and risk-sensitive prudential framework tailored to the size, activities and complexity of the MiFID investment firms while, at the same time, introducing substantial simplification in the calculation and reporting methodologies reducing the burden on participants in the market of investment services. Nonetheless, market participants and supervisors highlighted a number of issues or areas of potential improvements of the prudential framework that may lead to changes to either the IFR and IFD or to the related delegated regulations.

Therefore, this discussion paper addresses the elements highlighted by the supervisory community as priorities for possible improvements as well as several more detailed technical elements in all areas. Specifically:

Section 1 discusses the categorisation of investment firms, with particular emphasis on the coherence in the definitions of the applicable thresholds. The section does not elaborate on the categorisation of investment firms that have to apply for a credit institution authorisation (Class 1), as they are subject of dedicated technical standards. Nonetheless, the thresholds concerning the investment firms that have to apply the CRR (without a credit institution authorisation) as well as the monitoring of all those thresholds are part of the IFR. Therefore, this document includes an analysis regarding those thresholds and considers suggestions for improving definitions and coherence in calculations and monitoring.

Section 2 covers the conditions for investment firms that qualify as small and non-interconnected, including the criteria for their categorisation as well as considerations regarding the transition period from one category to another.

Section 3, in the context of analysing the adequacy of the own-funds requirements, looks into the definitions related to the fixed overheads requirements, the parameters and the mechanic of their calculation as well as the length of the wind down period.

Section 4, also in the context of the own-funds requirements, reviews the existing K-factors and recommends improvements in definitions or calculation methodologies.

Section 5 touches upon the possibility to include new K-factors, to cover risks currently only addressed under the pillar 2 framework or as possible alternatives to existing K-factors.

Section 6 discusses the implications of the adoption of the Banking Package (CRR3/CRD6) concerning the introduction of the fundamental review of the trading book (FRTB) and how this would be applicable to investment firms. Furthermore, this section discusses the boundary between trading book and banking book positions, considering that there is no K-factor on banking book positions in the IFR and the risk of regulatory arbitrage.

Section 7 aims at assessing the existing liquidity requirements and investigate the possibility of improving the risk sensitivity of the requirements arising from certain activities or services. Liquidity requirements are harmonised at Union level under the IFR, but the methodology is based on a fraction of the fixed-overheads requirements, and therefore it might not be always reflecting the liquidity needs related to certain activities.

Section 8 covers all the element of the IFR framework for prudential consolidation of investment firm groups, suggesting improvements to the existing text and extending the scope in line with similar provisions of the CRR as well as a possible extension of the scope to crowdfunding and crypto service providers.

Section 9 includes an analysis of the interactions of IFD and IFR with other regulations. This includes the potential investment firms exposures to crypto-assets and the provision of services related to those assets, the role of other providers of financial services, the interaction with the own funds requirements applicable to AIFMs and UCITS management companies providing ancillary MiFID services. A sub-section addresses specifically the interaction of MiCAR and IFD/ IFR in the areas where investment firms may provide services related to crypto-assets.

Section 10 is dedicated to aspects related to remuneration in relation to investment firms, AIFMs and UCITS management companies, including the scope of application,

remuneration policies, the requirements on variable remuneration, their oversight, disclosure and transparency.

Section 11 summarises the remaining elements, including reporting as well as references to topics that are not addressed in this document as they are already covered by other EBA publications (e.g., risks related to ESG factors and investment policy disclosure for investment firms). The part of the CfA on commodities markets will not be covered by this document and will be developed at a later stage.

There is a need for a dedicated data collection. This discussion paper will therefore be accompanied with a data collection that will supplement the feedback received as part of the consultation on this discussion paper. Following the public consultation, the EBA and ESMA plan to publish the final report in response to the Commission's call for advice by December 2024.

3. - Submission of comments

The deadline for submitting comments is **3 September 2024**.

Respondents may send their comments through this link to [EBA's website](#) where the consultation paper and the response form are available.

Likewise, please send a copy of your answers to the CNMV to the following email address: documentosinternacional@cnmv.es

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