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EBA Regular Use

Final Report

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

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1. Executive Summary

The EBA received a mandate under Article 52(3) of Regulation (EU) 2019/2033 (IFR) to develop in consultation with the European Securities and Markets Authority (ESMA) draft regulatory technical standards (RTS) to specify templates for investment policy disclosure of investment firms. IFR sets out in Article 52 a requirement for investment firms to disclose the following information: (1) proportion of voting rights attached to shares held, (2) voting behaviour, (3) use of proxy advisor firms and (4) voting guidelines.

The primary purpose of investment policy disclosure is to make public information on the influence of investment firms over the companies in which they hold directly or indirectly shares with voting rights attached.

Only investment firms that do not meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) IFR (class 2 investment firms) have to disclose information about their investment policy. Moreover, IFR specifies two materiality thresholds for the application of the investment policy disclosure requirement. First, it applies only to investment firms with on- and off-balance-sheet assets on average greater than EUR 100 million over the four-year period immediately preceding a given financial year. Second, only companies whose shares are admitted to trading on a regulated market and in which the proportion of voting rights exceeds 5 % of all voting rights issued by the company are considered relevant for disclosure.

The requirement of investment policy disclosure is fulfilled by the use of both templates and tables. Templates contain quantitative information while tables contain qualitative information.

The RTS include two annexes. Annex I contains templates and tables for the purpose of the disclosure of information on investment policy by investment firms. Annex II contains detailed instructions, which provide legal references and guidance concerning specific positions for these templates and tables. Quantitative disclosures must be accompanied by qualitative explanations and any other supplementary information that may be necessary in order for the users of that information to understand them, noting in particular any significant change in any given disclosure compared to the information contained in the previous disclosures.

2. Background and rationale

1. The Investment Firms Directive (IFD)¹ and the Investment Firms Regulation (IFR)² were published in the Official Journal of the European Union on 5 December 2019 and entered into force 20 days later. IFR became directly applicable 18 months after its entry into force, on 26 June 2021. Member States had time until the same date to adopt and publish measures that transpose IFD. In IFR and IFD, a significant number of mandates have been given to the EBA.
2. IFR sets out in Article 52 the requirement for investment firms to disclose information on investment policy, including the following information: (1) proportion of voting rights attached to shares held, (2) voting behaviour, (3) use of proxy advisor firms and (4) voting guidelines. The same article mandates the EBA to develop in consultation with the European Securities and Markets Authority (ESMA) draft regulatory technical standards (RTS) to specify templates for investment policy disclosure of investment firms. This information will be published on a yearly basis, along with the financial statements.
3. The objective of investment policy disclosure is to publicise information about the intended influence of investment firms on companies in which they hold shares. For instance, investment firms may adopt policies that promote better governance in the companies in which they have invested or ensure that these companies are managed with a long-term perspective.
4. The Second Shareholder Rights Directive (SRD II)³ contains related disclosure requirements. Some requirements concern shareholders' rights and go beyond what is required under Article 52 IFR. There are some similarities between SRD II and IFR, notably the rationale of both of them is based on promoting transparency on the policies pursued by asset managers and investment firms in relation to their voting rights in listed companies. However, SRD II focuses on shareholders' rights and firms' efficiency and is less prescriptive than IFR, as it requires only a global description of voting behaviour instead of a complete one. It also allows disclosure of information on a comply-or-explain basis and exclusion of non-significant votes. This option is not granted under IFR, which requires mandatory disclosure once thresholds are met.
5. During the development of these RTS, several policy choices have been considered. Regarding the list of economic sectors used in disclosure of the proportion of voting rights, ESCO was selected. Another policy choice consisted in the definition of what should be considered as

¹ 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 (OJ L 314, 5.12.2019, p. 64).

² Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (OJ L 314, 5.12.2019, p. 1).

³ Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement (OJ L 132, 20.5.2017, p. 1).

shares held indirectly by investment firms. It has been decided that shares held indirectly for the purpose of these RTS are shares held by subsidiaries or any other undertakings of investment firms, where an investment firm exercises significant influence⁴ or where close links exist⁵. They also include shares under the investment firm's management on behalf of clients, unless voting rights are retained by shareholders by virtue of a contractual arrangement prohibiting the investment firm to vote on their behalf. Furthermore, a policy choice was made to request disclosure of information on resolutions put forward by shareholders in addition to those put forward by the administrative or management body, as part of the description of the investment firm's voting behaviour. Another policy choice was to split proxy advisor firms into those that give voting recommendations and those that only execute voting instructions in the disclosure of the use of proxy advisor firms.

2.1 Scope

6. Pursuant to Articles 46(1) and 46(2) IFR, only investment firms that do not meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) IFR (Class 2 investment firms) have to disclose information about their investment policy.
7. IFR specifies two materiality thresholds for the application of the investment policy disclosure requirement. First, it applies only to investment firms that do not meet the criteria set out in Article 32(4), point (a) IFD, namely to investment firms with on and off-balance-sheet assets on average greater than EUR 100 million over the four-year period immediately preceding a given financial year. Second, only companies whose shares are admitted to trading on a regulated market and in which the proportion of voting rights exceeds 5 % of all voting rights issued by the company are considered relevant for this disclosure.
8. Unless an exemption has been granted, IFR and IFD apply to investment firms on an individual and on a consolidated basis, which includes disclosure requirements in Part Six IFR. Article 4(1)(11) IFR defines a consolidated situation as the result of applying the requirements of IFR to an investment firm group as if the entities of the group formed together a single investment firm.
9. The scope of consolidation of an investment firm group is described in more detail in the RTS on prudential consolidation under Article 7(5) IFR. Investment firm groups must use this prudential scope to fulfil the disclosure requirements, and not the scope of accounting consolidation, which may be different.
10. Regarding frequency and following Article 46(1) IFR, investment firms have to disclose this information on an annual basis and with the same date as they publish their annual financial statements on.

⁴ As defined in Article 2(13) of Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings.

⁵ As defined in Article 3(1)(4) of the Investment Firms Directive (IFD).

2.2 Investment policy disclosure requirements

11. In Pillar 3 disclosures, templates are developed to implement quantitative disclosure requirements, while tables implement disclosure requirements for qualitative information. Quantitative templates are mostly based on fixed formats. Tables, on the other hand, are of a more flexible nature. Whereas the mandate for the EBA mentions templates only, it can be understood more generally to include tables as well.
12. The RTS include two annexes. Annex I contains templates and tables for the purpose of the disclosure of information on investment policy by investment firms. Annex II contains detailed instructions, which provide legal references and guidance concerning specific positions for these templates and tables.
13. Article 52(1) IFR lists two types of disclosure concerning investment policy of investment firms: point (a) requires disclosure of the proportion of voting rights attached to shares held directly or indirectly, and points (b), (c) and (d) require description of the firm's voting behaviour, use of proxy advisor firms and voting guidelines respectively. The first type of requirement is quantitative in nature and can be addressed by a template, while the second type calls for a written description in a table.
14. Article 52(1), point (a) IFR requires the disclosure of the proportion of voting rights attached to shares held directly or indirectly, broken down by Member State and sector, considering only relevant companies as set out in Article 52(2) IFR. Shares held directly means shares held by the firm on its own account. Shares held indirectly means shares held by its subsidiaries or other undertakings, where the investment firm exercises significant influence or where close links exist. They also include the shares under the investment firm's management on behalf of clients for the exercise of the voting rights, unless voting rights are retained by shareholders by virtue of a contractual arrangement prohibiting the investment firm to vote on their behalf. To fulfil the requirement from Paragraph 1, point (a), template IF IP1 (TEMPLATE ON PROPORTION OF VOTING RIGHTS) has been developed. It is of a quantitative nature and includes a list of countries, which is further subdivided into sectors and companies. Each company is associated with the total proportion of voting rights held, which is over 5 %. The list of economic sectors is given in the European Skills, Competences, Qualifications and Occupations framework (ESCO), which consists of 27 sectors. These sectors are mapped to NACE codes.
15. Article 52(1), point (b) IFR requires three elements to be disclosed: a complete description of voting behaviour, an explanation of the votes and the ratio of proposals put forward by the administrative or management body of the company, which the investment firm has approved. The objective is to determine if an investment firm is an active shareholder that generally uses its voting rights or not, and how it uses them. To fulfil the requirement from Paragraph 1, point (b), the following tables and templates have been developed:
- IF IP2.01 - TABLE ON THE DESCRIPTION OF VOTING BEHAVIOUR;

- IF IP2.02 - TEMPLATE ON VOTING BEHAVIOUR;
- IF IP2.03 - TABLE ON EXPLANATION OF THE VOTES;
- IF IP2.04 - TEMPLATE ON VOTING BEHAVIOUR IN RESOLUTIONS BY THEME;
- IF IP2.05 - TEMPLATE ON THE RATIO OF APPROVED PROPOSALS.

16. Article 52(1), point (c) IFR calls for an explanation of the use of proxy advisor firms. These firms may provide research, advice or voting recommendations, or only execute voting instructions. There has been concern that links between proxy firms and undertakings or groups in which investment firms hold shares may create conflicts of interest. To fulfil the requirement from Paragraph 1, point (c), the following tables have been developed:

- IF IP3.01 - TABLE ON THE LIST OF PROXY ADVISOR FIRMS;
- IF IP3.02 - TABLE ON THE LINKS WITH PROXY ADVISOR FIRMS.

17. Finally, under Article 52(1), point (d) IFR, investment firms have to disclose all voting guidelines in the relevant scope, not only proxy voting guidelines. Voting guidelines can be extensive and may be decided upon on a case-by-case basis for certain items in a general meeting agenda. These guidelines may vary by geographical zone, theme of resolutions and even company by company. To fulfil the requirement from Paragraph 1, point (d), table IF IP 4 (TABLE ON VOTING GUIDELINES) has been developed. The response to this disclosure requirement is formatted as a free text, in which an investment firm describes its voting guidelines. The RTS provides guidance on the main points that investment firms should include in the description of their voting guidelines. In addition, investment firms should include the link to non-confidential documents describing their voting guidelines.

18. Disclosure should not be misleading at the time it is published. Its content will not undergo an external audit like the financial statements but should be subject to the same level of internal verification as that applicable to the management report included in the investment firm's financial report.

19. The templates and instructions provided in these draft RTS are detailed enough to enable the investment firms to provide information that is consistent and comparable across the industry and meaningful for the public. The level of detail is adjusted to avoid overburdening investment firms with this exercise, keeping in mind that small and non-interconnected firms are exempt from it.



3. Draft regulatory technical standards

COMMISSION DELEGATED REGULATION (EU) No .../..**of XXX****[...]****supplementing Regulation (EU) 2019/2033 of the European Parliament and of the Council with regard to regulatory technical standards for public disclosure of investment policy by investment firms**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014⁶ and in particular Article 52(3) thereof,

Whereas:

- (1) Regulation (EU) 2019/2033 of the European Parliament and of the Council requires investment firms other than small and non-interconnected investment firms to publicly disclose information on their investment policy, in order to provide transparency to their investors and the wider market participants on their influence over the companies in which they hold directly or indirectly shares to which voting rights are attached and on how they vote. The disclosure required includes information on the proportion of voting rights attached to the shares held directly or indirectly by the investment firms, information on their voting behaviour, an explanation of votes and the ratio of proposals put forward and approved, information on the use of proxy advisor firms and information on their voting guidelines.
- (2) This Regulation, as mandated in Article 52(3) of Regulation (EU) 2019/2033 of the European Parliament and of the Council, aims at specifying templates for the required disclosure, in response to the need for consistent and comparable public information on the public policy of investment firms.
- (3) While proportionate, the provisions of this Regulation aim at ensuring that the templates and tables used by investment firms for investment policy disclosures

⁶ OJ L 314, 5.12.2019, p. 1.

convey sufficiently comprehensive and comparable information on their voting behaviour and how it influences their investee companies.

- (4) More specifically, this Regulation introduces a quantitative disclosure template on the proportion of voting rights attached to shares held by the investment firms directly, and indirectly by their subsidiaries, or associates in accordance with Article 2, (13) of Directive 2013/34/EU, or any other undertakings with whom the investment firm is linked in accordance with Article 3(1)(4) of Directive (EU) 2019/2034, including shares under investment firms' management on behalf of clients, unless voting rights are retained by shareholders by virtue of a contractual arrangement prohibiting the investment firm to vote on their behalf. This Regulation also defines tables and templates for the description of the voting behaviour of the investment firm, and of the proportion of general meeting resolutions that the firm has approved or opposed, by topic, and including information on the departments or roles involved in deciding the voting position, the validation process and material changes in the rate of resolutions approved. In addition, it includes qualitative tables for the description of the use of proxy advisor firms and the links with those firms. Finally, it includes instructions on the information that investment firms must disclose regarding their voting guidelines.
- (5) This Regulation is based on the draft regulatory technical standards submitted by the European Supervisory Authority (European Banking Authority) (EBA) to the Commission.
- (6) EBA has conducted an open public consultation on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/20105.

HAS ADOPTED THIS REGULATION:

Article 1

Disclosure principles

Information to be disclosed in accordance with this Regulation shall be subject to the following principles:

- (a) Disclosures shall be subject to the same level of internal verification as that applicable to the management report included in the investment firm's financial report.
- (b) Disclosures shall be clear. They shall be presented in a form that is understandable to users of information and communicated through an accessible medium. Important messages shall be highlighted and easy to find. Complex issues shall be explained in simple language. Related information shall be presented together.

- (c) Disclosures shall be meaningful and consistent over time to enable users of information to compare information across disclosure periods.
- (d) Quantitative disclosures shall be accompanied by qualitative explanations and any other supplementary information that may be necessary in order for the users of that information to understand them, noting in particular any significant change in any given disclosure compared to the information contained in the previous disclosures.

Article 2

General specifications

1. Where disclosing information in accordance with this Regulation, investment firms shall ensure that numeric values are submitted as facts. Quantitative data disclosed as a percentage shall be expressed per unit with a minimum precision equivalent to two decimal places.
2. Where disclosing information in accordance with this Regulation, investment firms shall ensure that the data are associated with the following information:
 - (a) disclosure reference date and reference period;
 - (b) name and where relevant, identifier of the disclosing investment firm (Legal Entity Identifier (LEI));
 - (c) where relevant, accounting standard; and
 - (d) where relevant, scope of consolidation.

Article 3

Disclosure of proportion of voting rights

Investment firms shall disclose the information referred to in Article 52(1), point (a) of Regulation (EU) 2019/2033 by using template IF IP1 of Annex I to this Regulation and by following the instructions set out in Annex II to this Regulation.

Article 4

Disclosure of voting behaviour

Investment firms shall disclose the information referred to in Article 52(1), point (b) of Regulation (EU) 2019/2033 as follows:

- (a) the information on the voting behaviour by using table IF IP2.01 and template IF IP2.02 of Annex I to this Regulation and by following the instructions set out in Annex II to this Regulation;

- (b) the information on the explanation of the votes by using table IF IP2.03 and template IF IP2.04 of Annex I to this Regulation and by following the instructions set out in Annex II to this Regulation;
- (c) the information on the ratio of proposals which the investment firm has approved by using template IF IP2.05 of Annex I to this Regulation and by following the instructions set out in Annex II to this Regulation.

Article 5

Disclosure of explanation of the use of proxy advisor firms

Investment firms shall disclose the information referred to in Article 52(1), point (c) of Regulation (EU) 2019/2033 as follows:

- (a) the information on the list of proxy advisor firms used by the investment firm by using table IF IP3.01 of Annex I to this Regulation and by following the instructions set out in Annex II to this Regulation;
- (b) the information on the links with proxy advisor firms by using table IF IP3.02 of Annex I to this Regulation and by following the instructions set out in Annex II to this Regulation.

Article 6

Disclosure of voting guidelines

Investment firms shall disclose the information referred to in Article 52(1), point (d) of Regulation (EU) 2019/2033 by using template IF IP4 of Annex I to this Regulation and by following the instructions set out in Annex II to this Regulation.

Article 7

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.
Done at Brussels,

For the Commission
The President



*[For the Commission
On behalf of the President*

[Position]

4. Accompanying documents

4.1 Cost-benefit analysis / impact assessment

20. Following Article 10 of Regulation (EU) No 1093/2010 (EBA Regulation), the EBA shall analyse the potential costs and benefits of draft regulatory technical standards. RTS developed by the EBA shall therefore be accompanied by an Impact Assessment (IA) that analyses ‘the potential related costs and benefits’.

21. This analysis presents the IA of the main policy options included in this Final Report on the draft RTS on disclosure of investment policy by investment firms under Article 52 of Regulation (EU) 2019/2033 on the prudential requirements of investment firms, which the EBA is mandated to develop under Article 52(3) of Regulation (EU) 2019/2033 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (‘IFR’). The IA is high-level and qualitative in nature.

A. Problem identification and background

22. Article 52 IFR sets out disclosure requirements on class 2 investment firms⁷, aimed at providing more transparency on the intended influence of investment firms on companies in which they hold shares. Information is to be disclosed on the following topics: (1) the proportion of voting rights attached to shares held, (2) voting behaviour, (3) use of proxy advisors and (4) voting guidelines; all are to be disclosed on an annual basis and alongside financial statements.

23. Article 52(3) IFR mandates the EBA to develop draft RTS and disclosure templates to specify on these disclosures.

B. Policy objectives

24. The draft proposed RTS and disclosure templates presented in this report reflect the EBA’s work on this mandate.

C. Options considered, assessment of the options and the preferred option

25. Section C presents the main policy options discussed and the decisions made during the development of the RTS and templates. Advantages and disadvantages, as well as potential costs

⁷ Furthermore, application of the disclosure requirements is subject to two materiality thresholds: (1) applicable only to investment firms with on- and off-balance-sheet assets on average greater than EUR 100 million over the four-year period immediately preceding the given financial year; (2) only companies whose shares are admitted to trading on a regulated market and in which the proportion of voting rights exceeds 5 % of all voting rights issued by the company are considered relevant for disclosure. Class 2 investment firms are those that are not systemically important but do not qualify as small and non-interconnected investment firms either (IFR and IFD apply fully).



and benefits of the policy options and the preferred options resulting from this analysis are assessed below.

Economic sectors in template IF IP1

Option 1a: sector classification in template IF IP1 to follow ESCO

Option 1b: sector classification in template IF IP1 to follow any other classification system (GICS, ICB, etc.)

26. Article 52(1) IFR requires the 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’. This information is to be included in the proposed template IF IP1. Several sector classifications exist that could be used, including the Global Industry Classification Standard (GICS, 11 sectors), the Industry Classification Benchmark (ICB, 10 industries) and the European Skills, Competences, Qualifications and Occupations framework (ESCO, 27 sectors). The last is closely related to the NACE code sector classification which is already used as part of the EBA’s supervisory reporting framework. In order to ensure maximum consistency between the supervisory reporting and disclosure framework and to minimise any additional costs to institutions, **option 1a has been chosen as the preferred option**. The new template IF IP1 will classify sectors according to ESCO.

Definitions of ‘shares held indirectly’

Option 2a: follow a narrow interpretation of ‘shares indirectly held’, to include shares held by subsidiaries of an investment firm

Option 2b: follow a broader interpretation of ‘shares indirectly held’, to include also shares held by any other undertaking over which the investment firm exercises a significant influence, either by virtue of a formal agreement or any other business relation, and shares under the investment firm’s management for the exercise of the voting rights on behalf of clients (in addition to shares held by subsidiaries of an investment firm)

27. Article 52(1) IFR requires disclosure in the context of shares ‘held directly or indirectly by the investment firm’. The exact meaning of ‘held indirectly’ is not specified further in the regulation, The primary purpose of Article 52 is to allow stakeholders to better understand the influence of investment firms over the companies in which they hold directly or indirectly shares to which voting rights are attached. In order to understand the full picture, a broad interpretation of the term ‘indirectly held’ was hence assessed as necessary. The term should not only include shares held by subsidiaries, but also shares held by any other undertaking where the parent investment firm exercises a decisive/dominant influence or control over the undertaking, either by virtue of a formal agreement or any other business relation, and shares under the investment firm’s management, unless voting rights are retained by shareholders by virtue of a contractual arrangement prohibiting the investment firm to vote on their behalf. **Option 2b was therefore assessed as the preferred option**. Whilst this implies some additional costs for institutions in the form of a broader scope of disclosure to be provided under Article 52(1), the more complete



information and transparency this achieves for the market is assessed to outweigh the additional costs.

Information to be included on the ratio of approved proposals

Option 3a: follow a narrow interpretation of Article 52(1), point (b) IFR on the disclosure requirements

Option 3b: follow a broader interpretation of Article 52(1), point (b) IFR on the disclosure requirements

28. Article 52(1), point (b) IFR requires investment firms to disclose a complete description of their voting behaviour and an explanation of the votes, including information on the ratio of approved proposals put forward by the administrative or management body of the company which the investment firm has approved. The primary objective of this article is to allow stakeholders to understand investment firms' voting behaviour, i.e. how they vote. In this regard, investment firms should explain how they have voted on proposals put forward by the administrative or management body of the firm, as specifically required by Article 52(1), point (b). 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. This implies slightly more information to be disclosed by investment firms but will allow a complete and more informed picture for investors on their voting behaviour. **Option 3b was therefore assessed as the preferred option**, choosing a broader interpretation of Article 52(1), point (b): an explanation of the votes should be disclosed not only in the form of including 'the ratio of proposals put forward by the administrative or management body of the company which the investment firm has approved', but also the ratio of those proposed by shareholders.

Explanation of the use of proxy advisor firms by contract type

Option 4a: explanation on the use of proxy advisor firms, without distinction on the type of firm

Option 4b: explanation on the use of proxy advisor firms, including a distinction between those that give voting recommendations and those that only execute voting instructions

29. Article 52(1), point (c) IFR requires investment firms to disclose an explanation of the use of proxy advisor firms. These firms may provide research, advice or voting recommendations, or may only execute voting instructions. When disclosing this information, investment firms should provide information on any links between proxy firms and undertakings or groups in which investment firms hold shares, in order to address any concerns on potential conflicts of interest. When implementing this disclosure requirement, it was assessed whether information on the type of contract with the proxy advisor firm should be disclosed or not. Information on whether the proxy advisor firm gives voting recommendations or only executes them on behalf of the investment firm is important for stakeholders to better understand any potential links with the



relevant undertaking. **Option 4b was therefore assessed as the preferred option** in order to ensure maximum transparency.

Table IP 3.02 on the link with proxy advisor firms – presentation of type of link

Option 5a: introduce a drop-down list for the type of link

Option 5b: allow open text for the type of link

30. Table IP 3.02 requires information on the links with proxy advisor firms, including the type of link. **Option 5a has been chosen as the preferred option** and a drop-down menu has been chosen for the type of link. This will ensure standardisation of the answers, improve comparability and at the same time lower the risk of entities providing free text information that is incorrect / not useful. In addition, a predefined list of options is likely to reduce the costs to institutions as it should make it easier for them to complete the templates.

31. The items included in the drop-down menu were chosen using the categories as per the international accounting standard IAS 24 for related parties, as (1) they offer a broad overview of the different situations of influence worth reporting to stakeholders, (2) the list is already widely understood and used, and (3) in cases of any doubt, investment firms could always leverage the guidance of the accounting standards.

D. Conclusion

32. The RTS and associated templates developed under Article 52(3) IFR have been drafted to ensure maximum transparency for the market within the mandate under Article 52, and at the same time minimise any disproportionate cost to institutions. Where possible, alignment with existing frameworks has been ensured, and disclosure requirements have been interpreted and implemented taking a broad view, so as to ensure that the disclosure templates convey as much relevant information as possible.

4.2 Feedback on the public consultation

33. The EBA publicly consulted on the draft proposal contained in this paper.

34. The consultation period lasted for three months and ended on 1 July 2021. Five (5) responses were received, of which all were published on the EBA website.

35. This paper presents a summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments and the actions taken to address them if deemed necessary.

36. In many cases several industry bodies made similar comments or the same body repeated its comments in the response to different questions. In such cases, the comments and EBA analysis are included in the section of this paper where the EBA considers them most appropriate.

37. Changes to the draft RTS have been incorporated as a result of the responses received during the public consultation.

Summary of key issues and the EBA's response

38. There were five responses received from stakeholders. The feedback received mainly concerned: i) the potential overlap between the disclosure requirements of Regulation (EU) 2019/2033 (IFR) and the Second Shareholder Rights Directive 2007/36/EC (SRD II); ii) the meaning of 'indirect holdings'; iii) the disclosure of the ratio of proposals put forward by the shareholders.

39. Regarding the potential overlap with the disclosure obligations of SRD II, the EBA acknowledges that there are some similarities between SRD II and IFR, notably the rationale of both of them is based on promoting transparency on the policies pursued by asset managers and investment firms in relation to their voting rights in listed companies. However, SRD II focuses on shareholders' rights and firms' efficiency and is less prescriptive than IFR, as it requires only a global description of voting behaviour instead of a complete one. It also allows disclosure of information on a comply-or-explain basis and exclusion of non-significant votes. This option is not granted under IFR, which requires mandatory disclosure once thresholds are met. Thus, the objective and scope of the SRD is different from IFR and investment firms cannot be exempted from the disclosure requirements of the Article 52(1) IFR.

40. Regarding the meaning of 'indirect holdings', respondents asked to exclude cases where the investment firms cannot exercise the voting rights attached to the shares. Moreover, it was requested to review the definition of 'indirect holdings' to include only the shares held by subsidiaries. Another respondent would like to exclude the shares held by subsidiaries as well. In this regard, the EBA believed that a broad interpretation of 'indirect holdings' is consistent with the text and the intent of the EU legislator. Excluding shares held by subsidiaries or other



controlled entities would enable regulatory arbitrage where a firm may delegate the votes to a controlled entity in order to escape the disclosure requirements. The instructions have been further improved to clarify that shares with voting rights retained by the investment firm's client should not be part of the disclosure, because they do not give any control or significant influence to the investment firm.

41. Regarding the disclosure of the ratio of proposals put forward by the shareholders, respondents disagreed with the inclusion of proposals put forward by shareholders in template IF IP 02.05 since they believed the proposed disclosure is not in line with the provisions of Article 52(1), point (b) IFR; it does not provide valuable information and grouping resolutions by counterparty who put them forward could be burdensome and time-consuming. On the other hand, the EBA believed that the proposed disclosure is consistent with the requirement for a 'complete description of voting behaviour' in Article 52(1), point (b) IFR. Thus, stakeholders are able to understand whether the ratio of approved proposals may be different depending on who puts them forward. The benefits outweigh the costs of providing the ratio.



Summary of responses to the consultation and the EBA's analysis

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
General comments			
Application of the disclosure requirements at group level only	One respondent asked for application of the disclosure requirements at group level only in order to avoid the risk of duplication of disclosure between the individual and consolidated level and to be consistent with the approach adopted under Article 12(3) EU TD, which exempts an undertaking from making a notification where the notification is made by its parent undertaking or, where its parent undertaking is itself a controlled undertaking, by its own parent undertaking.	Article 52(1) of Regulation (EU) 2019/2033 (IFR) defines the scope: it applies to investment firms on an individual basis.	No amendment needed.
Application of the disclosure requirements to investment firms that choose not to exercise their voting rights	One respondent believed that investment firms that do not exercise their voting rights (which they are permitted to choose to do) should not be required to provide any (granular) disclosure on their voting behaviour in the suggested template (i.e. IF IP2 – Voting Behaviour) in order to avoid unduly burdensome disclosure for investment firms. In particular, they should not be obliged to disclose the number of general meetings at which a firm may have been entitled to vote. To this end, a new field in template IF IP2 should be added to allow investment firms to state when they have not exercised their voting rights.	The decision to exercise the voting rights or not can be reversed at any time without asking for permission and it is not the only variable impacting the assessment of control or influence over the voting rights. Assessing whether the investment firm exercises significant control or influence over its own voting rights should include, but not be limited to, the decision to exercise the voting rights.	No amendment needed.



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Overlap with SRD II disclosure requirements	<p>Some respondents believed that the disclosure requirements of Article 52(1) of Regulation (EU) 2019/2033 (IFR) may overlap with disclosure obligations already covered by other EU requirements such as the Transparency Directive 2004/109/EC amended by Directive 2013/50/EU and the Shareholder Rights Directive 2007/36/EC amended by Directive (EU) 2017/828 (SRD II) and supplemented by Implementing Regulation (EU) 2018/1212.</p> <p>In that way, respondents welcomed the EBA's approach in considering the already existing disclosure requirements and showing the gaps between the and SRD II disclosure requirements. However, respondents required clarification of further aspects to avoid different processes for shareholder transparency and to reduce the content of the templates to information which is valuable and required by IFR. Please refer also to the specific answers to the questions below for further details.</p>	<p>See paragraph 4 of 'Background and rationale' section in the final report: 'The Second Shareholder Rights Directive (SRD II) contains related disclosure requirements. Some requirements concern shareholders' rights and go beyond what is required under Article 52 IFR. There are some similarities between SRD II and IFR, notably the rationale of both of them is based on promoting transparency on the policies pursued by asset managers and investment firms in relation to their voting rights in listed companies. However, SRD II focuses on shareholders' rights and firms' efficiency and is less prescriptive than IFR, as it requires only a global description of voting behaviour instead of a complete one. It also allows disclosure of information on a comply-or-explain basis and exclusion of non-significant votes. This option is not granted under IFR, which requires mandatory disclosure once thresholds are met.' Thus the objective and scope of the SRD is different from IFR.</p> <p>We cannot exempt an investment firm from disclosure requirements even if it also has to disclose other information according to another directive.</p>	No amendment needed.
Responses to questions for the RTS on disclosure of investment policy by investment firms			
Question 1. Are the instructions, tables and templates clear to the respondents?			
Calculation of the 5 % threshold	Two respondents asked for some clarifications regarding the calculation of the 5 % threshold. In particular, they asked: whether the percentage	The threshold calculation contains no rounding. Article 52(2) IFR says "exceeds", so if it is exactly 5 %	The term 'excluded' has been added in the instructions of IF



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	<p>should be rounded or not; to clarify in the formula that only exceeding the threshold of 5 % triggers the disclosure obligation by setting a greater-than sign as follows: 'Percentage between > 5 % and 100 %'; how the voting rights attaching to shares which are lodged as collateral should be treated and how securities lending agreements should be treated.</p> <p>In addition, it was asked to specify the point in time of the calculation of the threshold. In this regard, investment firms should only be obliged to disclose their proportion of voting rights when they exceed 5 % of all voting rights at a given point in time in which these voting rights can be exercised. Temporary holdings exceeding 5 % of all voting rights during other periods of the year in which these voting rights cannot be exercised should not trigger an obligation for disclosure.</p>	<p>it is not in the scope of disclosure. Consistently, the instructions say: 'exceeds the threshold of 5 %'.</p> <p>Shares lodged as collateral should be part of the disclosure if the investment firm has voting rights attached to the shares. It depends on the agreement.</p> <p>Voting rights that are lent are not part of the disclosure because the investment firm cannot exercise them.</p> <p>Regarding the time of the determination of the 5 % threshold, Article 46(1) IFR specifies that disclosure is made at the date when the investment firm publishes its annual financial statements. The 5 % threshold is evaluated at the reporting date.</p>	<p>IP1, column e: <i>'percentage between 5 % (excluded) and 100%'</i>.</p> <p>A paragraph has been added in the instructions of IF IP1, column e, to clarify that shares are part of the disclosure if the investment firm has voting rights attached to them.</p> <p>No amendment needed.</p>
Aggregated approach	<p>One respondent suggested a clarification within the instructions such that the templates IF PF2, IF PF3 and IF PF4 must be filled in by investment firms on an aggregated basis and not on a company-by-company level.</p>	<p>Article 5 IFR sets the requirement on an individual basis, and Article 7(1) IFR on a consolidated basis.</p>	<p>No amendment needed.</p>



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Explanation of any material change in the rate of approval	<p>One respondent noticed that the explanation of any material change in the rate of approval in table IF IP2.03 might overlap with the already existing disclosure requirements of an explanation of the most significant votes (comply-or-explain) based on SRD II.</p> <p>Therefore, institutional investors and asset managers should be able to demonstrate that they comply with the requirement of IF IP2.03 by referring to their explanation of the most significant votes on the basis of SRD II.</p>	<p>These disclosure requirements have a different scope: explanation of the most significant votes in the SRD, explanation of material changes in voting behaviour in IFR. For more details, please refer also to the general comment on ‘Overlapping with SRD II disclosure requirements’.</p>	No amendment needed.
Question 2: Do the respondents identify any discrepancies between these tables, templates and instructions and the requirements set out in the underlying regulation?			
Scope – ‘relevant companies’ (Template IF IP1):	<p>One respondent requested clarification in Annex II (instructions) that the relevant companies mean a company as defined in Article 1(1) of the Implementing Regulation (EU) 2018/1212 which has its registered office in a Member State and the shares of which are admitted to trading on a regulated market situated or operating within a Member State. Moreover, it should be clarified that only listed shares are covered by the new disclosure. This would be in line with the scope and requirements of SRD II as well as with the SEC filing 13F.</p>	<p>The definition of an issuer given by Article 1(1) of the Implementing Regulation (EU) 2018/1212 excludes shares that are traded in OTC markets. This exemption is not provided in IFR.</p>	No amendment needed.
Meaning of ‘shares held directly or indirectly’:	<p>Some respondents asked for clarifications on the meaning of ‘shares held directly or indirectly’. Specifically, shares under management held on</p>	<p>Indeed there is a typo, shares under management are held indirectly for voting rights.</p>	<p>In the instructions of IF IP1, column e, it is now specified that</p>



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	<p>behalf of clients by virtue of discretionary portfolio management arrangements should not be considered as ‘held by the investment firm directly’. Such a case should be covered by the term ‘shares held indirectly’ provided that the investment firm can exercise its voting rights. ‘Shares held directly’ should cover only shares held on the investment firm’s own account, being part of its own funds.</p> <p>As regards ‘shares held indirectly’, one respondent asked to delete the reference to ‘significant influence’ and ‘close links’ and keep only the reference to ‘shares held by a controlled undertaking’ as long as the investment firm is able to direct the voting rights.</p> <p>Another respondent considered that the proposed approach regarding the ‘shares held indirectly’ conflicts with the application of the prudential consolidation in a group context and an investment firm can only hold shares indirectly if the firm is able to exercise the voting rights itself. This is not the case for entities being part of the group which exercise their own voting rights.</p> <p>In the same direction, another respondent deemed that the term ‘shares held indirectly’ 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) and that shareholders are not</p>	<p>Regarding the scope of indirect holdings, the EBA believes that a broad interpretation is not against the text and the intent of the EU legislator.</p> <p>Excluding shares held by subsidiaries or other entities over which the investment firm exercises a significant influence would enable regulatory arbitrage where a firm may delegate the votes to a controlled entity in order to escape the disclosure requirements.</p> <p>The instructions of IF IP1, column e, have been amended in the following way: ‘The “shares held indirectly” are shares in the scope that may be held indirectly by a subsidiary of the investment firm, or by any other undertaking over which the investment firm exercises a significant influence either by virtue of a formal agreement or any other business relation. They also include shares under the investment firm’s management on behalf of clients, unless voting rights are retained by shareholders by virtue of a contractual arrangement prohibiting the investment firm to vote on their behalf.’</p>	<p>shares under management are held indirectly.</p> <p>Please refer to the ‘EBA analysis’ column. The instructions of IF IP1, column e, have been amended to clarify that shares with voting rights retained by the investment firm’s client are out of the disclosure, because they do not give any</p>



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	represented by investment firms if the voting rights are retained by the shareholders.	The legislator does not make any distinction between the case where the investment firm can exercise voting rights on the behalf of a shareholder with instructions and the case where the investment firm can exercise voting rights on behalf of a shareholder without instructions.	control or significant influence to the investment firm.
Voting behaviour (Templates IF IP2)	<p>Regarding the template IF IP2.01, one respondent suggested deleting rows 7 and 8 on the identification of conflicts of interest since the disclosure of such conflicts of interest and the related policy are already required under the MiFID framework for certain cases.</p> <p>In template IF IP2.02, it was also suggested deleting row 5 about general meetings in which the investment firm has opposed at least one resolution.</p> <p>In template IF IP2.03, it was suggested deleting row 3 on the number of full-time equivalents used to analyse resolutions and examine voting records.</p>	All these elements are consistent with the requirements of the level 1 text.	No amendment needed.
Voting guidelines (Template IF IP4)	<p>Regarding template IF IP4, one respondent suggested clarifying that the proposed summary of the voting guidelines is a general one and not for each equity holding.</p> <p>One respondent strongly recommended removing the proposed IF IP2.04 and the accompanying instructions since the benefits of publishing voting behaviour by theme in terms of added value to</p>	<p>The short summary should not contain analysis that is detailed enough to enable a company to orchestrate the outcome of a shareholder meeting.</p> <p>The breakdown of resolutions by theme is part of the mandate to standardise the templates in order to increase the transparency and user-friendliness of the</p>	<p>Adding 'general' in the instructions for template IF IP4: 'short general summary'.</p> <p>No amendment needed.</p>



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	investors and market participants are unclear, while the administrative burden and compliance costs for investment firms are quite evident.	disclosures. Grouping voted resolutions by theme gives useful information on the actual voting behaviour of investment firms. Grouping the resolutions should not be burdensome relative to the amount of work needed to determine the vote. Moreover, most large institutional investors already publicly disclose how they have voted their shares in investees, therefore this information is already available and only grouping it by theme is not a burdensome requirement.	
Proxy advisory firms (Template IF IP3)	<p>One respondent suggested merging the templates IF IP3.01 and IF IP3.02 into one single template since both templates partially contain similar information (a/b). This could reduce the administrative workload.</p> <p>In addition, column e of the template IF IP3.02 should be deleted since the disclosure of conflicts of interest policies is already required under MiFID.</p> <p>Two respondents welcomed the approach of using the LEI code as an identifier for proxy advisers, however one of them expects that proxy advisor firms do not have valid LEIs and the other one believed it should be mandatory.</p>	<p>IP3.01 is about all proxy firms, IP3.02 is about proxy firms with which relevant undertakings have links.</p> <p>Conflicts of interest are part of the explanation of the use of proxy advisor firms.</p> <p>The LEI standard is useful in identifying firms uniquely and links between them, but proxy advisor firms may not have been given an LEI. Requesting a mandatory LEI for them in the template would amount to adding a requirement for these firms, which is not covered by the mandate. Thus, the identifier should ideally be an LEI, but other types of identifiers may be considered. For this reason, the instructions say: 'preferably a LEI'.</p>	<p>No amendment needed.</p> <p>No amendment needed.</p> <p>No amendment needed.</p>
Question 3: Do the respondents agree that the new draft RTS fits the purpose of the underlying regulation?			



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Details not in line with Article 52(1) IFR	<p>Some respondents deemed that the level of detail required by the RTS, notably the Annexes thereof, does not meet the requirements of proportionality as it imposes unnecessary additional efforts and cost on investment firms, even the largest ones, without sufficient reasons being provided in the consultation paper and without a solid legal basis in Article 52(1) IFR.</p> <p>In this regard, the following requirements are suggested for deletion:</p> <ol style="list-style-type: none"> 1) requirement to publish the proportion of in-person votes respectively the proportion of votes by mail or electronic voting (template IF IP2.01 and the accompanying instructions); 2) 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 (template IF IP2.02 and the accompanying instructions); 3) requirement to publish voting behaviour in resolution by theme (templates IF IP2.04 and the accompanying instructions); 4) requirement to also publish information on the ratio of approved proposals put forward by shareholders (IF IP2.05 and the accompanying instructions). 	<p>The level of detail of the templates has been assessed by the EBA during the Impact Assessment phase and has been found to be adequate for the purpose of the regulation. It is explained in the recitals of the RTS and in section 2.2 of the Final Report.</p>	<p>No amendment needed.</p>



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Question 4: What are respondents' views 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?			
Scope of template IF IP2.05	Some respondents disagreed with adding information on the resolutions put forward by shareholders that are approved by the investment firm itself. The information should be limited to the legal requirements in Article 52(1), point (b) IFR which only ask for information about the ratio of proposals put forward by the administrative or management body of the company which the investment firm has approved. Therefore, row 2 of the template IF IP2.05 should be deleted.	Having two ratios (of proposals put forward by the administrative or management body of the company and of proposals put forward by the shareholders) enables comparison of the two values by establishing a benchmark. This explains the voting behaviour better than having only the first value and it is crucial to show a comprehensive picture of investment firms' voting behaviour in line with the requirement for a 'complete description of voting behaviour' of Article 52(1), point (b) IFR. Thus, stakeholders are able to understand whether the ratio of approved proposals may be different depending on who puts them forward. The template IP2.05 only asks for a single ratio (one cell), therefore it is not an excessive burden.	No amendment needed.