

1. INTRODUCTION AND BACKGROUND

- 1.1 The Danish Association of Asset Management and Investment Firms ("**DAAIF**") (in Danish: *Den danske Fondsmæglerforening*) is currently in a dialogue with the Danish FSA (in Danish: *Finanstilsynet*) and the Danish Ministry of Industry, Business and Financial Affairs regarding the transposition into Danish law of Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms ("**IFD**"). So far, the Danish FSA and the ministry have taken the position that the current national regulation of investment firms will be continued under the future regime for Danish investment firms, unless specifically regulated by the IFD or Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms ("**IFR**"). The Danish regulation has for historical reasons partly been based on requirements to Danish credit institutions derived from Directive 2013/36/EU ("**CRD**").
- 1.2 In order to support its dialogue with the Danish authorities, the DAAIF is interested in gaining insight into the expected national transposition of the IFD into the national law of comparable EU member states. In particular, the DAAIF is interested in understanding whether elements of gold-plating are expected in the regulation of investment firms authorised in your jurisdiction. The DAAIF does not require information on the national transposition of rules applicable to foreign investment firms with an establishment in your jurisdiction.

2. THE QUESTIONNAIRE

- 2.1 As a start, we kindly ask you to provide high level answers to the questions. If a subject or the reply is of particular interest to the DAAIF, we might at a later stage ask you to provide more in-dept answers if available.
- 2.2 We appreciate that answers at this point in time may be uncertain. We therefore kindly ask you to assess the degree of probability and, if you deem this relevant, to add the source of information. Our client is interested in information from sources which you deem reliable even if no official confirmation can be provided.
- 2.3 Please note that we do not need description in relation to investment firms which pursuant to Article 1(2) of the IFR will be regulated by the CRD.
- 2.4 In case of questions, please do not hesitate to contact Camilla Søborg, casb@kromannreumert.com.

3. DEADLINE

- 3.1 We kindly ask you to provide your answers by 5 October 2020.

QUESTIONNAIRE REGARDING THE NATIONAL TRANSPOSITION OF IFD AND GOLDPLATING OF THE IFD AND THE IFR

High-level responses provided by Freshfields Bruckhaus Deringer LLP in Frankfurt am Main.

Question No	Topic	Question	Relevant provision of the IFD/IFR	Reply	Degree of probability (high/medium/low)
1.	Current regulation of investment firms	Please provide a high-level description of the current framework for the regulation of investment firms in your jurisdiction. Please include references to the most important pieces of regulation.		<p>Investment firms within the meaning of Article 4(1)(1) of MiFID II are regulated as financial services institutions (<i>Finanzdienstleistungsinstitute</i>) in accordance with the German Banking Act (<i>Kreditwesengesetz, KWG</i>), the German Securities Trading Act (<i>Wertpapierhandelsgesetz, WpHG</i>) and accompanying legal acts or as credit institutions (<i>Kreditinstitute</i>) if they conduct principal broking business (in MiFID terms: execution of orders) pursuant to § 1(1) s. 2 no. 4 KWG and/or underwriting business (in MiFID terms: underwriting on a firm commitment basis) pursuant to § 1(1) s. 2 no. 10 KWG (regardless of whether they additionally conduct deposit and/or lending business).</p> <p>The prudential requirements for the regulation of investment firms are broadly provided for in the KWG which, inter alia, implements the CRD IV. The prudential requirements under the KWG are partly supplemented by the WpHG, which implements the MiFID II, in relation to investment firms, e.g. by imposing additional organisational and conduct requirements, as well as fit and proper requirements of managing directors of investment firms.</p> <p>Investment firms require a license from, and are supervised by, the German Federal Financial Supervisory Authority (<i>Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin</i>) which is supported by the Deutsche Bundesbank in its ongoing supervision.</p> <p>Investment firms are broadly subject to the same prudential requirements as credit institutions with the exception of regulatory requirements that specifically address banking business, such as large</p>	

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				<p>exposure requirements for lending business or the requirements under the German Deposit Guarantee Act (<i>Einlagensicherungsgesetz</i>, EinSiG) for deposit business.</p> <p>Investment firms are currently not directly supervised by the ECB at solo level. However, to the extent that a CRR investment firm within the meaning of Article 4(1)(2) of Regulation (EU) No. 575/2013 (<i>Capital Requirements Regulation</i>, CRR) is included in the scope of prudential consolidation of a CRR credit institution and the consolidated group fulfils the significance criteria pursuant to Article 6(4) of Council Regulation (EU) No 1024/2013 (SSM Regulation), the ECB is directly responsible for the supervision of the group on a consolidated basis pursuant to Article 8(1) of Regulation (EU) No 468/2014 (SSM Framework Regulation) for the matters set out in Article 4(1) and (2) SSM Regulation which indirectly also encompasses the consolidated CRR investment firms and financial institutions within the meaning of Article 4(1)(26) CRR (which would also include such investment firms within the meaning of Article 4(1)(1) MiFID II which do not qualify as CRR investment firms).</p> <p>In addition to CRR investment firms which are directly subject to the CRR, investment firms which do not qualify as CRR investment firms are required to apply the CRR and Chapter 2 of Regulation (EU) 2017/2402 (<i>Securitisations Regulation</i>) <i>mutatis mutandis</i> under German regulatory law.</p> <p>Investment firms are obligated to secure their liabilities from securities transactions in accordance with the German Investor Compensation</p>	

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				<p>Act (<i>Anlegerentschädigungsgesetz, AnlEntG</i>) which implements Directive 97/9/EC by affiliation to the statutory compensation scheme.</p> <p>CRR investment firms which require an initial capital of at least EUR 730,000 in accordance with Article 28(2) CRD IV, which is implemented in § 33(1) s. 1 no. 1c KWG, are subject to the German Recovery and Resolution Act (<i>Sanierungs- und Abwicklungsgesetz, SAG</i>), whereas investment firms that do not qualify as CRR investment firms are outside the scope of the SAG. The BaFin is the competent resolution authority for the recovery and resolution of CRR investment firms. To the extent that CRR investment firms are included within the scope of prudential consolidation at the level of a CRR credit institution which is directly supervised by the ECB, CRR investment firms are subject to Regulation (EU) No 806/2014 (<i>SRM Regulation</i>). In such a case, the Single Resolution Board is responsible for drawing up the group resolution plans and adopting resolution measures for the consolidated group, whereas the BaFin is responsible for the implementation of the resolution decisions.</p>	
2.	General framework of transposition				
2.1	Timing of transposition	When do you expect the transposition of the IFD to take place in your jurisdiction?	IFD Article 67(1)	Pursuant to Article 9 of the Draft Bill of the German Federal Ministry of Finance for the Implementation of the Directive (EU) 2019/2034 on the Supervision of Investment Firms (<i>Entwurf eines Gesetzes zur Umsetzung der Richtlinie (EU) 2019/2034 über die Beaufsichtigung von Wertpapierfirmen, Draft Bill</i>) as published on 17 August 2020, the relevant amendments shall enter into force on 26 June 2021.	High

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				<p>The Draft Bill is currently in the consultation phase and it is not yet clear when it will be adopted by the German Government, and ultimately passed by Parliament. Since the Draft Bill has already been prepared and been published, we expect that it will ultimately be adopted prior to 26 June 2021 and that it will apply as of that date. However, it is currently not yet clear to what extent the Draft Bill will be amended by the German Government (after the consultation phase), by the German Federal Parliament (<i>Bundestag</i>) or the German Federal Council (<i>Bundesrat</i>).</p>	
2.2	Mode of transposition	How is the transposition expected to take place (e.g. act or regulation issued by the competent supervisory authority)?		<p>The Draft Bill has been prepared by the German Federal Ministry of Finance and will need to be ultimately adopted by the German Federal Parliament and the German Federal Council in order to implement the IFD. However, the Draft Bill currently foresees that, for certain specific regulatory matters, the German Federal Finance Ministry is entitled to adopt ordinances (<i>Rechtsverordnungen</i>) on technical matters which are directly applicable. Such matters include the requirements regarding (i) the electronic communication with the BaFin (§ 14(2) Draft Bill), (ii) the type, scope, date and form for the submission of notifications in qualifying holding procedures (§ 14(3) Draft Bill) or (iii) the identification of employees whose professional activity is significant for the risk profile of the investment firms, the relevant decision-making processes and responsibilities for the remuneration systems, the principles for the appropriate design of the remuneration systems and the monitoring of the appropriateness and transparency of the remuneration systems by investment firms (§ 46(3)(1) Draft Bill). The relevant ordinances must be adopted in consultation with the Deutsche Bundesbank. In addition, the German Federal Finance Ministry is entitled to transfer the competence to adopt an ordinance to the BaFin.</p>	High

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2.3	Degree of continuity of regulation	Will the transposition be made as changes to existing regulation or in the format of new regulation?		The IFD will broadly be implemented by the creation of the German Investment Firms Act (<i>Wertpapierfirmengesetz, WpFG</i>) which will replace the KWG for the regulation and supervision of Class 2 and Class 3 investment firms. Besides, however, the Draft Bill also partly amends certain existing laws (e.g., the KWG and the SAG) since they currently provide for the regulatory requirements for investment firms.	High
2.4	Degree of alignment with the IFD/IFR	Is the transposition generally expected to follow the wording and/or content of the IFD or do you expect any gold-plating (including, if relevant, any regulation additional to the IFR)?		The implementation broadly follows the content of the IFD. Based on a high-level review of the draft, we have not identified any substantial gold-plating in the Draft Bill. However, the Draft Bill goes beyond the IFD insofar as foreign currency, units of account and crypto assets are included as financial instruments. Therefore, services which are related to these financial instruments can possibly qualify as licensable investment services. It is currently not yet clear whether the German Government (after the consultation phase), the German Federal Parliament or the German Federal Council would include gold-plating in certain areas.	Medium
2.5	Timing of draft regulation	Is the draft regulation transposing the IFD available (in full or partially) or alternatively an outline of the intended transposition? If so, please provide the draft or outline as available. If these are not available, please state when drafts are expected.		Yes, the Draft Bill has been published on the website of the German Federal Ministry of Finance and can be accessed on https://www.bundesfinanzministerium.de/Content/DE/Gesetzestexte/Gesetze_Gesetzesvorhaben/Abteilungen/Abteilung_VII/19_Legislaturperiode/2020-08-17-Gesetz-Umsetzung-Richtlinie-Beaufsichtigung-Wertpapierfirmen/1-Referententwurf.pdf?__blob=publicationFile&v=3 . However, the Draft Bill will need to be adopted by the German Parliament and passed into the legislative process (see above at 2.4).	High

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3.	Regulation of areas of particular interest				
3.1	Parent undertakings and groups	Do you expect regulation of parent undertakings which are not themselves investment firms, and regulation of groups including investment firms which is additional to the regulation included IFD/IFR?	IFR Articles 7 and 8	No, the Draft Bill does not provide for any regulation of parent undertakings which go beyond the regulation included in the IFD/IFR, in particular for Union parent (mixed) investment holding companies. It is currently not yet clear whether the German Government (after the consultation phase), the German Federal Parliament or the German Federal Council would include additional rules.	Medium
3.2	Management and governance	Do you expect regulation of management and governance of investment firms which is additional to the regulation included in IFD/IFR and MiFID II? Please include in your answer information on the regulation of outsourcing, if available.	IFD Articles 26, 28 and 29	No, the Draft Bill does not provide for any regulation of management and governance of investment firms which is additional to the regulation included in IFD/IFR and MiFID II. It is currently not yet clear whether the German Government (after the consultation phase), the German Federal Parliament or the German Federal Council would include additional rules.	Medium
3.3	Remuneration	Do you expect regulation of investment firms' remuneration to management and staff which is additional to the regulation included in IFD/IFR and MiFID II?	IFD Articles 30-34 IFR Article 51	No, the Draft Bill does not provide for any regulation of investment firms' remuneration to management and staff which is additional to the regulation included in IFD/IFR and MiFID II. It is currently not yet clear whether the German Government (after the consultation phase), the German Federal Parliament or the German Federal Council would include additional rules.	Medium
3.4	Good business practice	Do you expect regulation of investment firms' duty to act honestly, fairly and professionally which is	N/A	Pursuant to Sec. 63(1) WpHG, investment firms are required to provide investment services and ancillary investment services honestly, fairly and professionally in accordance with the best interests of their	Medium

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		additional to the regulation included in MiFID II?		<p>clients. The provision implements Article 24(1) MiFID II. By contrast, the Draft Bill does not provide for any additional requirements in this regard.</p> <p>It is currently not yet clear whether the German Government (after the consultation phase), the German Federal Parliament or the German Federal Council would include additional rules.</p>	