

Comments

of the German Insurance Association (GDV)

ID number 6437280268-55

on ESMA's Call for Evidence

**"Impact of the Best Practice Principles for Providers
of Shareholder Voting Research and Analysis"**

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Executive Summary

The German insurance industry welcomes this opportunity to comment on ESMA's Call for Evidence regarding the "Best Praxis Principles for Providers of Shareholder Voting Research and Analysis" (BPP).

The German insurance industry supports the efforts of ESMA to improve the **efficiency of the BPP**. On the other hand the BPP are only a **non-binding commitment**. Due to the influence of the proxy advisors on decision making processes in annual general meetings (AGM) of stock listed companies, **binding rules** would be preferable. An opportunity to set those binding rules is the actual revision of the Shareholder Rights Directive.

From the German insurance industry's point of view the BPP and, furthermore, binding rules for proxy advisors should focus particularly on more **transparency** of their acting and on the **qualification** of their employees, especially with regard to the corporate legal framework. Moreover, the existence of a **Conflict-of-Interest-Policy** should be mandatory for proxy advisors. For more details please see our comments below on individual aspects.

1. General Questions

Q1: What is the nature of your involvement in the proxy advisory industry (proxy advisor, investor, issuer, proxy solicitor etc.)? To facilitate the comprehensibility of your response to this Call for Evidence, please describe your role in and your interaction with the industry.

Many German insurance companies are stock listed, thus making them issuers. Interaction with the proxy advisory industry is based on the national and international shareholder structure and above all institutional investors heavily rely on proxy advisory industry information.

Q2: Have you previously had concerns with the functioning of any areas of the proxy advisory industry? If yes, please specify.

Although the German insurance industry does not see structural deficiencies, one of the concerns relates to a lack of transparency. This results from sometimes unclear propositions of industry members and from undisclosed details of the methodologies (e.g. the Quickscore results published by certain industry participants cannot be linked to the information presented by the issuer). In addition, experience has shown that employee qualification is not always sufficient (e.g. the lack of basic understanding of the two-tier-board-system becomes evident every so often).

Q4: What is your view on the width and clarity of the scope of entities covered by the BPP (i.e. do you consider that the BPP cover the European proxy advisory market appropriately)? Please explain.

Although the relevant proxy advisors are currently amongst the signatories, the BPP only present a non-binding commitment which could be revoked at any time. Due to the influence the proxy advisory industry has on decision making processes in AGMs, binding rules

would be preferable. The current revision of the Shareholder Rights Directive presents an option to set such rules.

Q5: In your view, are the BPP drafted in a way so that they address the following areas identified in ESMA's 2013 Final Report? Please provide examples to support your response.

a. Identifying, disclosing and managing conflicts of interest;

A conflict-of-interest policy on the side of the signatories should be mandatory and such policy should be disclosed in a way that it is easy to find for interested stakeholders. It is hard to discover the exact content of such policies on the webpages of industry members, for example Institutional Shareholder Services (ISS) refers to several policies and has a reference to multiple documents on the webpage; it is hard to discover which elements are contained.

Furthermore, the BPP only require to disclose conflicts to the client. Since industry advice has a broader impact on all shareholders, conflicts should be made public, e.g. on the webpage of the advisor.

b. Fostering transparency to ensure the accuracy and reliability of the advice;

Currently, there is no binding obligation to share voting proposals with the issuer. Issuers should be given the opportunity to comment on voting reports/proposals before publication to avoid factual errors.

c. Disclosing general voting policies and methodologies;

In principle, yes.

d. Considering local market conditions;

Only regarding “house-policies” the BPP contain provisions that the extent to which local standards are taken into account should be disclosed. There is no requirement for any explanation on why advisor’s policies deviate from local standards and rules (e. g. ISS Compliance Statement (10 June 2014), p. 8: “*Our benchmark policies are informed by four main factors: ... local regulation and soft-regulation such as Codes of Best Practices and Stewardship Codes, ..., local market practices, regulation and other market-specific factors*”). An obligation to describe the background and reason for deviations would be necessary for the recipient, including the general public, to understand and assess voting proposals. The same applies to a clarification as to on which factors a certain market standard is defined. For example, ISS requires a 5 year cooling-off period for elections to Supervisory Boards. The German legal requirement is 2 years. There is no explanation on why this deviation would be justified or based on which criteria a differing market standard would have been set, especially regarding the jurisdiction in question. Agenda items on AGMs are too important and might be critical for the fate of a company to use a “one size fits all”.

In general, where proxy advisors deviate in their proposals from the existing statutory provisions in a certain jurisdiction, there should be an obligation to detail the reasoning behind. There is an inherent threat that advisors create shadow legislation. Setting the legal framework for corporations is the task of the national legislator only.

e. Providing information on engagement with issuers.

Currently the BPP contain no binding obligation to disclose engagement with issuers on an individual basis. This only results in general statements (see e.g. GlassLewis Statement of August 22, 2014, page 19).

Q6: What is your overall assessment of the quality of the signatory statements? Please provide examples referring to the areas identified under Q5.

The statements available on the webpage via BPPG are too broad. Although all of them follow the structure of the BPP, they first and foremost appear as marketing materials (see for example the 29-page statement of ISS dated June 10, 2014). At least an executive summary should be required outlining the compliance with the BPP sections.

Not all statements are available for download on the webpage of the BPPG (ECGS-Proxinvest).

Q8: How would you describe the impact which the BPP have had on the proxy advisory industry in practice? Please provide examples to support your response.

No measurable impact realized.

Q9: Have you observed any changes in signatories' practices in the areas mentioned under Q5 since the publication of the BPP in March 2014 and specifically during the 2015 proxy season? Please provide examples to support your view and specify whether these changes addressed the concerns you mentioned in response to Q2, if any.

No measurable changes realized.

Q11: Do you consider other measures than the BPP necessary to increase understanding of and confidence in the proxy advisory industry? If yes, please explain why and specify the measures which would in your opinion be suitable.

In light of the increasing impact of proxy advisor guidelines and voting proposals on AGMs of publicly listed companies, binding rules

would be preferable. Since the currently discussed revision of the Shareholder Rights Directive intends to address Proxy Advisors, this revision should be used to create a binding set of rules for the industry which all stakeholders can rely on.

Q12: Do you have any other general comments that ESMA should take into account for the purposes of its review?

- Proxy advisors should be open for exchange with issuers and listen to their view on the matter.
- Issuers should be given the opportunity to comment on voting reports before publication to avoid factual errors.
- Exchange with issuers and other interested parties in the process of setting guidelines is strongly recommended as only this forms the basis for reasonable guidelines. Otherwise e.g. every cap for the number of mandates of a supervisory board member or a chairman of a supervisory board is arbitrarily.
- In addition to the availability and sufficiency of voting policies and guidelines, the quality and completeness of the documents must also be taken into account. Very often propositions are not clear at all (e.g. treatment of limits with regard to Supervisory Board mandates found in the current BVI/IVOX guidelines). Additional documents with relevant information are often not available to issuers.
- In some cases, the guidelines give a heavy weight to single details of complex agenda topics (e.g. in case of remuneration policies). As a consequence, there is no responsible and reasonable treatment of the resolution in general.

2. Questions for issuers

Q34: As regards your experience with proxy advisors before and after the publication of the BPP, please describe:

a. whether proxy advisors have provided research, advice and/or recommendations on your company;

Yes, those services have been provided to our member companies.

b. whether you have used services from proxy advisors (please specify which services, e.g. research, consultancy).

Yes. Many companies (esp. investment companies in groups) use research and consultancy services of the industry.

Q35: In your experience, to what extent have the BPP enhanced clarity as regards the expectations issuers can have towards communication with proxy advisors? Please provide examples to support your response.

No measurable impact realized.

Q36: Has your approach to seeking or maintaining dialogue with proxy advisors within or outside the proxy season changed in any way as a result of the publication of the BPP (e.g. in terms of frequency, nature, circumstances)? If yes, please provide examples and quantitative evidence.

No.

Q37: In your experience, to what extent have the BPP improved proxy advisors' procedures for managing and disclosing conflicts of interest, and specifically the following two types?

- a. The proxy advisor provides services to both the investor and the issuer;
- b. The proxy advisor is owned by an institutional investor or by a listed company to whom, or about whom, the proxy advisor is providing research, advice and/or recommendations.

Please provide examples to support your response.

No measurable change realized.

Q38: In your experience, to what extent have the BPP enhanced clarity as regards proxy advisors' methodologies and the nature of their information sources, thereby allowing you to better assess the accuracy and reliability of the proxy advisors' research, advice and/or recommendations as regards your company?

Please provide examples to support your response.

No improvement realized. Since the BPP describe the used methodologies on a high level only, case-by-case proposals/guidelines can still not accurately be assessed by issuers, especially since background information and materials are not available/accessible.

Q39: In your experience, have the BPP enhanced:

- a. proxy advisors' level of awareness of local market, legal and regulatory conditions which your company is subject to?

No.

- b. proxy advisors' disclosure of the extent to which they take the above conditions into account?

No.

Please provide examples to support your response.

The interaction of the German insurance industry with proxy advisors indicates that sometimes basic understanding of legal framework is not sufficiently given. This, for example, can regularly be seen in connection with the questionnaire ISS uses for its Quickscore rating where the assessment proposed by ISS is often based on incorrect interpretation of statutes or the factual situation of the issuer. Other examples are guidelines where statutory provisions or the deviation from the same is not sufficiently explained/justified (e.g. cooling-off period at ISS; overboarding at BVI/IVOX).

Berlin, 23 July 2015