

Comments on the Consultation Paper on integrating sustainability risks and factors in the UCITS Directive and AIFMD

Q1: How do you understand or how would you define the notion of “sustainability risks” for the purposes of the delegated acts adopted under the UCITS Directive and AIFMD?

According to para. 17 it is suggested to define „sustainability risks“ as the risks of fluctuation in the value of positions in the fund’s portfolio due to ESG factors. We fully agree with this approach and would recommend to even implementing this definition into the rules themselves.

Nonetheless there has to be a differentiation between sustainability risk as defined in para. 17 and sustainability factors (ESG factors). Unlike sustainability risks, sustainability factors should not be defined within the delegated acts.

A further definition of sustainability factors should be defined solely within the taxonomy regulation. Any references to the determination of sustainability factors relating to organisational requirements should be deleted.

Q2: Do you agree with the proposed amendments relating to organisational requirements included above following a high-level and principles-based approach? If not, please elaborate on the reasons for preferring a more granular approach and describe how you would incorporate such view in the aforementioned provisions.

We fully agree with the high-level and principles-based approach as followed with the suggested amendments. First, it is in line with the principles-based approach of the existing regulation. Any further requirements on a more granular level would lead to disproportionalities regarding the existing requirements for all other risks within the delegated acts. In addition, a principles-based approach is necessary because of the current dynamics in the ongoing sustainability regulation. A more specified regulation in this early stage would not only disregard these dynamics. It also would determine rules that may become obsolete after a short period.

Q3: Do you see merit in expressly requiring or elaborating on the designation of a qualified person within the authorised entity responsible for the integration of sustainability risks and factors (e.g. under Article 5 of the Commission Directive 2010/43/EU and Article 22 of the Commission Delegated Regulation (EU) 231/2013)?

We do not see merit in the designation of an extra-qualified person responsible for sustainability risks and factors within the authorised entity. Proportionality is a key element of the high-level principles-based approach, meaning while implementing regulatory requirements size and activities of the authorised entity should be taken into account. E.g., relatively small companies with only ten employees and a minimal amount of activities should not be forced to design an extra-qualified person. Moreover, as there is no need to install a qualified person

for all other risks that have to be taken into account (e.g. liquidity risk, market risk, credit risk), it would overrate the relevance of sustainability risks within the organisational requirements of the delegated regulation.

Q4: Would you propose any other amendments to the provisions on organisational requirements in the Commission Directive 2010/43/EU or Commission Delegated Regulation (EU) 231/2013 as set out in Annex III to ensure the effective and adequate integration of sustainability risks and factors?

No. We believe that further amendments to the provisions, in particular more detailed organisational requirements would not be consistent with the principles-based approach.

Q5: Do you agree with the proposed amendments to provisions relating to due diligence included above following a high-level and principles-based approach? If not, please elaborate on the reasons for preferring a more granular approach and describe how you would incorporate such view in the aforementioned provisions.

As set forth before, we fully agree with the high-level principles based approach. Due to the ongoing dynamics in the sustainable finance regulation, we believe that it is appropriate to amend the provisions of the delegated acts on a basic level. This also applies to due diligence requirements.

Q6: Do you see merit in further elaborating in the provisions above on the identification and ongoing monitoring of sustainability risks, factors and indicators that are material for the financial return of investments?

No. We do not see any substantial merit in further elaborations. In particular, the requirements for due diligence related to sustainability factors should not go beyond those for other relevant factors that may cause relevant risks.

Q7: Do you agree with the proposed inclusion of recitals relating to conflicts of interest? Should the technical advice cover specific examples? If so, what would be specific examples of conflicts of interests that might arise in relation to the integration of sustainability risks and factors and should be covered in the advice?

As recitals or even rules of the existing delegated acts do not contain such conflict of interests relating to other relevant risks we do not see the need of the inclusion of such relating to sustainability risks. Further and more detailed examples for conflict of interests regarding sustainability risks would lead to an inappropriate imbalance compared to corresponding provisions of other relevant risks.

Q8: Would you propose any other amendment to the provisions on operating conditions in the Commission Directive 2010/43/EU or Commission Delegated Regulation (EU) 231/2013 as set out in Annex III to ensure the effective and adequate integration of sustainability risks and factors?

No. We believe that further amendments to the provisions, in particular more detailed operational conditions would not be consistent with the principles-based approach.

Q9: Do you agree with the proposed amendments to provisions relating to the risk management included above following a high-level and principles-based approach? If not, please elaborate on the reasons for preferring a more granular approach and describe how you would incorporate such view in the aforementioned provisions.

As set forth before, we fully agree with the high-level principles based approach. Due to the ongoing dynamics in the sustainable finance regulation, we believe that it is appropriate to amend the provisions of the delegated acts solely on a basic level. This also applies to risk management.

Q10: Do you see merit in further specifying the content of the risk management policy by expressly listing key elements for the effective integration of sustainability risks (e.g. techniques, tools and arrangements enabling the assessment of sustainability risks, probability of occurrence and time horizon of sustainability risks with regard to the expected time of holding of the positions bearing the risks, quality of underlying data and methodologies etc.)?

We do not see merit in introducing further specified provisions resp. determining key elements for the integration of sustainability risks. As fund managers do not have to follow any specific requirements, in particular tools, techniques and arrangements regarding other relevant risks as market or credit risks, the introduction of such requirements would overvalue the relevance of sustainability risks compared to other risks. Moreover, the principles-based approach allows flexibility as the sustainability regulation, particularly the taxonomy, is a dynamic process.

Q11: Do you see merit in amending risk management provisions relating to regular review of risk management policies and systems in order to more specifically refer to elements related to sustainability risks (e.g. quality of the arrangements, processes, techniques and data used, need for authorised entities to highlight the limitations, and demonstrate the absence of available alternatives)?

See Q10.

Q12: Would you propose any other amendment to the provisions on risk management in the Commission Directive 2010/43/EU or Commission Delegated Regulation (EU) 231/2013 as set out in Annex III to ensure the effective and adequate integration of sustainability risk and factors?

As set forth before, we fully agree with the high-level principles based approach. Due to the ongoing dynamics in the sustainable finance regulation, we believe that it is appropriate to amend the provisions of the delegated acts solely on a basic level. This also applies to risk management.

Q13: What level of resources (financial and other) would be required to implement and comply with the proposed changes (risk management arrangements, market researches and analyses, organisational costs, IT costs, training costs, staff costs, etc., differentiated between one off and ongoing costs)? When answering this question, please also provide information about the size, internal organisation and the nature, scale and complexity of the activities of your institution, where relevant.

In order to be able to implement all requirements, individual persons in all departments would have to take on additional tasks. In many cases, a coordinator would be necessary (1 FTE). Getting relevant third-party data to assess sustainability risks would be costly. Therefore, a European data/research platform at manageable costs depending on the size of the company would be helpful.

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