

To : EUROPEAN SECURITIES AND MARKETS AUTHORITY

From : FNV, The Netherlands

Date : 2019 02 19

Subject : Consultation on integrating sustainability risks and factors in the UCITS Directive and AIFMD

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**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?**

The integration, among other norms and initiatives, of the ILO Fundamental Conventions, the Sustainable Development Goals, the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises and the Paris Agreement in investment decision-making.

**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.**

In article 4, 1.e), article 5.5 and article 57.1.e) we think that “must” would be more accurate than “shall”.

**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 ESMA REGULAR USE 15 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)?**

Yes.

**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?**

Yes. It is important to include requirements on control and reporting of the policy. Reporting should be at least on an annual basis and should cover ESG Key Performance Indicators that are homogeneous in order to compare and contrast them. An independent committee formed by different stakeholders (representatives of trade unions, NGOs, consumer organizations, etc.) should be created and it would be responsible, among other duties, of supervising and monitoring the decision-making process of the asset manager.

**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.**

In article 23.5) and 18.5 we think that “must” would be more accurate than “shall”.

**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?**

Yes. ESG Key Performance Indicators should be identified, based on the conventions, norms and recommendations highlighted in Q1.

**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?**

It would be of interest, especially and specifically for individual financial products, as we mentioned in Q4, to require an independent committee formed by different stakeholders (representatives of trade unions, NGOs, consumer organizations, etc.) responsible for supervising and monitoring the decision-making process of the asset manager and the possible conflicts of interest in which the manager could be involved.

**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.

**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.**

Yes.

**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.)?**

Yes. It is necessary to define the Key Performance Indicators (KPIs), the reporting period, the covenants, norms and recommendations on which these KPIs should be based and the requirements and composition of the control and supervisory body of the sustainability committee.

**Q11: Do you see merit in amending risk management provisions relating to the 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)?**

Yes. It is important to establish processes before investing, during the investing period and after it, including engagement and voting policies. Report on all of those matters is also a key issue.

**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?**

No.