BIPAR RESPONSE

ESMA Consultation paper on Technical Advice on integrating sustainability risks and factors in the UCITS Directive and AIFMD

19 February 2019

BIPAR Register ID number: 58041461167-22

Avenue Albert-Elisabeth 40
B-1200 Brussels
Tel: +32/2/735 60 48
Fax: +32/2/732 14 18
bipar@bipar.eu
www.bipar.eu

BIPAR is the European Federation of Insurance Intermediaries. It groups 51 national associations in 30 countries. Through its national associations, BIPAR represents the interests of insurance agents and brokers and financial intermediaries in Europe.

Besides some large multinationals, the insurance intermediation sector is composed of hundreds of thousands of SMEs and micro-type operators. It accounts for 0.7% of European GDP, and over one million people are active in the sector. Insurance and financial intermediaries facilitate the insurance and financial process for several hundreds of millions of customers. The variety of business models, the high level of competition and the geographical spread in the sector ensure that everyone in Europe has easy access to tailor-made insurance and financial services.

BIPAR is a member of the World Federation of Insurance Intermediaries (WFII).
Introduction

BIPAR supports the Commission’s and ESMA’s ambition to encourage investments in a more sustainable world.

Insurance and financial intermediaries can play an important role in helping investors achieve their goals and objectives – both financial and non-financial – as well as in contributing to economic growth through signposting products promoting efficient allocation of capital.

We recognize the need for a concise framework on transparency of sustainability risks and factors towards consumers in order to build public trust.

We agree that integrating ESG consideration into investment decision process and creating a new framework for sustainable finance can be useful to channel investments into sustainable activities.

It is important to ensure that the various legislative initiatives do not trigger duplication of requirements for financial advisors but establish a consistent framework.

BIPAR also believes that there are also other ways to promote sustainable products and incentivize transitioning to a green economy - such as tax incentives that could encourage investment into sustainable economic activities. More regulation and more information should not be the sole solution.

BIPAR Contribution to the CP

Horizontal comments

- BIPAR welcomes the high-level principle-based approach followed by ESMA in relation to the integration of sustainability risks and factors in the UCITS Directive and AIFMD. This will encourage innovation, as the EU market is far from reaching maturity in this respect.

- Too prescriptive requirements in relation to sustainability risks may result in potential regulatory inconsistencies and in legal uncertainty for both financial advisors and their clients. And this mainly when considering that several Commission legislative proposals are still ongoing – proposal for a Regulation on the establishment of taxonomy, proposal for a Regulation on disclosures relating to sustainable investment and sustainability risks.

- Regarding the proposed amendments to the delegated acts under UCITS Directive and AIFMD, it is important to highlight that sustainability considerations should not outweigh the relevance of the other relevant requirements when setting down their processes and systems. The ESMA technical advice should therefore explicitly state that ESG considerations are to be seen only as an additional aspect to the other legal requirements to which fund managers are obliged to comply with.

- BIPAR notes furthermore that these additional requirements related to sustainability considerations should apply in accordance with the proportionality principle.

- BIPAR is concerned that there is lack of clarity as to what is meant by the term ESG factors. Investment firms and fund managers need to have a clear and consistent understanding of what investments are considered sustainable, including all three ESG aspects. A well-built taxonomy is therefore a prerequisite step before market players are obliged to take into account ESG risks and factors in their risk management policies and organisational procedures (and later in their advice
and suitability test). The feedback that BIPAR received from its member-associations shows that currently there is not a common understanding as to what actually ESG factors and ESG risks mean neither amongst investment advisors, nor amongst clients and potential clients.

- BIPAR notes the will to introduce sustainability considerations in the investment value chain as a whole. However, considering that the classification criteria specifying what is sustainable are still under examination and the supply of new sustainable products is still low, BIPAR calls for a reasonable approach in order to achieve optimal sequencing between the relevant legislative initiatives. The market needs more time to react to the new “sustainability reality” and address the public’s needs in a stable and efficient way.

- A first priority is the definition of sustainable investment and this goes hand in hand with a taxonomy and this should be reflected in the application date of various legal acts. BIPAR believes that ESMA should include in its technical advice a reference to the application date. In this light, BIPAR would like to draw the attention of ESMA to the fact that, given the way the ESG considerations are being introduced in the investment and advisory process across sectors, duplications of requirements may arise from potential overlaps between the general rules imposing on financial market participants, insurance intermediaries, financial advisors and fund manager disclosure requirements related to sustainability risks (lex generalis) and the sector-specific rules specifying such requirements for financial advisors under the framework of UCITS and AIFMD (lex specialis).

**Sustainability risks**

**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 notion of sustainability risks is as complex as the concept of sustainability itself. The risk is that in case of no clear definition of the concept of “sustainability” in the market, it is likely that there will be misunderstandings among the market participants which will subsequently undermine the credibility of the concept of “sustainability” in the longer term.

Sustainability risks and factors may be different in the various sub-sectors of the financial sector. Sustainability risks in the insurance sector, for example, are probably different from the sustainability risks under the UCITS framework.

As for this ESMA consultation paper, BIPAR understands the concept of “sustainability risks” in a way similar to the one ESMA puts forward in this consultation paper; namely as the risk of fluctuation in the value of positions in the fund’s portfolio due to ESG factors.

**Conflicts of interest**

**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?**

The existing rules on conflicts of interest as laid down in the relevant Directives adequately cover every situation of conflicts-of-interest that may arise and they should also apply to the advice of sustainable products.
BIPAR sees therefore no cases related to ESG objectives which would – a priori- require different treatment than cases where no ESG factors are taken into account. BIPAR endorses therefore the high-level principle-based approach followed by ESMA in respect of the conflicts of interest requirements through introducing a recital.