Comment

of the German Insurance Association (GDV)

to ESMA Consultation paper on Integrating sustainability risks and factors in the UCITS Directive and AIFMD

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General Comment

The German Insurance Association (GDV) is the association of insurers in Germany. Its more than 450 members are representing over 95% of the insurance market in Germany.

Around a third of their total investments of 1,6 bn EUR German insurers have invested in investment funds. Fund investments thus play an important role for insurers. Therefore, GDV gladly takes the opportunity to present its views on ESMA’s considerations on integrating sustainability risks and factors in the UCITS Directive and AIFMD.

The Insurance industry is not only regulated under Solvency II but at the same time affected by other regulations such as AIFMD, UCITS. Thus, GDV likes to point out that it is of high importance to ensure consistency in the integration of sustainability risks into the various regulatory regimes. It is particularly important to ensure a common understanding among European regulatory authorities on fundamental issues like the understanding of sustainability risks. In order to ensure a level playing field and to avoid regulatory arbitrage, misunderstandings and higher costs due to different terminologies, all concepts of sustainable finance and respective terminology should be consistent across different regimes.

From an investor point of view we see the risk that the resulting implementation costs and the compliance costs could be passed on to investors ultimately. Against that background unnecessary costs should be avoided. As an example for such unnecessary costs we consider the designation of a qualified person which is responsible for the integration of sustainability risks and factors. Especially in regard to those funds that are not marketed as sustainable, these additional costs would not be in the best interest of the clients.

Summary of questions

1) Terminology

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?

In ESMA's understanding of sustainability risks, we see a different interpretation of the terms compared to EIOPA's understanding.

As the largest German institutional investor in funds – regulated under Solvency II and at the same time affected by other regulations such as AIFMD, UCITS as an institutional investor – we would like to point out that a common understanding among European regulatory authorities on this fundamental issue is particularly important. Otherwise we see the risk of different terminologies, which can lead to misunderstandings and higher costs.

In order to ensure a level playing field and to avoid regulatory arbitrage all concepts of sustainable finance and respective terminology should be consistent across different regimes.

2) Organisational requirements

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.

GDV shares ESMA's view that the integration of sustainability risks within the UCITS and AIFMD framework is better done through a high-level principle-based approach, similar to that already followed for a number of other relevant risks (e.g. interest rate or credit risk). A detailed prescription at this stage could result in regulatory inconsistencies given that there are still several ongoing legislative proposals in this area.

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)?

GDV considers the designation of a qualified person within the authorised entity which is responsible for the integration of sustainability risks and factors as not necessary. Management companies are already required to employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them. This would also include the integration of any sustainability aspects.

From an investor point of view there is the risk that the specific designation of a qualified person could cause higher costs, which could be passed on to investors ultimately. Such cost drivers should be avoided, especially in regard to those funds that are not marketed as sustainable, as these additional costs would not be in the best interest of the clients.

In addition, we see the risk that smaller firms in particular - compared to larger ones – could be disproportionately affected by the resulting fixed costs. This could ultimately lead to a reduced diversity of providers. Thus, also for reasons of proportionality, the necessity of appointing a qualified person seems inappropriate.

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 comment.

3) Operating conditions

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 stated above, GDV believes that the integration of sustainability risks within the UCITS and AIFMD framework should be accomplished through a high-level principle-based approach.

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 comment.

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?

No comment.

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 comment.

4) Risk management

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.

Please refer to our answer on Q5.

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.)?

No comment.

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)?

No comment.

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 comment.

5) Cost-Benefit Analysis

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.

The implementation of new requirements regarding sustainability risks and the compliance with the proposed changes will cause one off and ongoing costs in different areas. Examples are already listed in the question. Costs could be substantial, especially at the beginning. The effort required to implement the specifications is high, which could be particularly difficult to handle especially for small and medium-sized enterprises. Moreover, it is not evident that the expected higher costs are matched by a reasonable benefit.

From an investor point of view there is the risk that the resulting higher costs could be passed on to investors ultimately. Against that background unnecessary costs should be avoided. An example for such unnecessary costs is the designation of a qualified person which is responsible for the integration of sustainability risks and factors.

In addition, we see the risk that smaller houses in particular - compared to larger ones - could be disproportionately affected by initial costs as well as ongoing costs. This could ultimately lead to a reduced diversity of providers.

Berlin, 18 February 2019