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Directorate-General for Financial Stability, Financial Services and Capital Markets Union

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**Subject: Formal request to EIOPA and ESMA for technical advices on potential amendments to, or introduction of, delegated acts under Directive 2009/65/EC, Directive 2009/138/EC, Directive 2011/61/EU, Directive 2014/65/EU and Directive 2016/97/EU with regard to the integration of sustainability risks and sustainability factors**

Dear Mr Bernardino,  
Dear Mr Maijoor,

On 24 May 2018, the Commission adopted a package of measures on sustainable finance. The delegated acts for which the Commission seeks technical advices by EIOPA and ESMA would supplement this initial package by amending, or, where necessary, introducing level 2 measures under Directive 2009/65/EC (hereafter, UCITS Directive), Directive 2011/61/EU (hereafter, AIFMD), Directive 2014/65/EU (hereafter, MiFID II), Directive 2009/138/EC (hereafter, Solvency II Directive) and Directive 2016/97 (hereafter, IDD) with the aim of incorporating sustainability risks, i.e. environmental, social and governance risks in the decisions taken and processes applied by financial market participants subject to those rules.

In view of this, certain provisions of level 2 measures adopted in accordance with

- Articles 12(3), 14(2) and 51(4) of the UCITS Directive,
- Articles 12(3), 14(4), 15(5) and 18(2) of AIFMD;
- Articles 16(12), 23(4) and 24(13) of MiFID II;
- Articles 50(1)(a) and (b) of the Solvency II Directive; and
- Articles 25(2) and 28(4) of IDD

would need to be further specified and thus amended. When considering rules on target market assessment in Commission Delegated Directive 2017/593 and Commission Delegated Regulation 2017/2358, EIOPA and ESMA are invited to consider sustainability risks and other sustainability factors. Where necessary for the achievement of consistency across sectors, EIOPA and ESMA are invited to also consider Article 135(1)(a) of the Solvency II Directive for potential new level 2 measures.

I invite EIOPA and ESMA to provide their final technical advices, including cost-benefit analysis, by 30 April 2019, in order to allow the Commission to consider the adoption of potential delegated acts. Given the very close links between the rules at stake, the Commission invites both EIOPA and ESMA to closely liaise with and consult each other in the preparation of their technical advices to ensure consistency across sectors.

When developing the technical advices under this mandate, EIOPA and ESMA are invited to keep in mind that a potential delegated regulation under the IORPs Directive 2016/2341 might be adopted, once and if the related empowerment as proposed in the Commission Proposal for a Regulation on disclosures relating to sustainable investments and sustainability risks and amending the IORPs Directive (COM(2018)354) is in place.

Should the preparatory works suggest that the technical advice by EIOPA on skill, expertise and knowledge required for the assessment of sustainability risks would neither ensure consistency across sectors nor regulatory neutrality, EIOPA should develop draft regulatory standards under Article 50(2)(a) of the Solvency II Directive to further specify the requirements set out in Article 42(1)(a) of that Directive.

I believe that close cooperation between EIOPA, ESMA and the Commission on this call for technical advices should be maintained and I suggest that the Commission staff is invited to join the ESMA and EIOPA working groups preparing the technical advices as observers. I am confident that such cooperation will contribute to a successful outcome in the preparation of the delegated acts.

In the interest of transparency, the Commission will publish this request for technical advice on the DG Financial Stability, Financial Services and Capital Markets Union website once it has been sent.

Yours sincerely,



Olivier Guersent

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**Request to ESMA and EIOPA for technical advices on potential amendments to, or introduction of, delegated acts under Directive 2009/65/EC, Directive 2009/138/EC, Directive 2011/61/EU, Directive 2014/65/EU and Directive 2016/97/EU with regard to the integration of sustainability risks and sustainability factors**

**1. Introduction**

With this mandate to EIOPA, the Commission seeks EIOPA's technical advice on potential amendments to delegated acts adopted pursuant to:

- Article 50(1)(a) and (b) of Directive 2009/138/EC<sup>1</sup> (hereafter, Solvency II Directive),
- Articles 25(2) and 28(4) of Directive 2016/97<sup>2</sup> (hereafter, IDD)

in order to explicitly require the integration of sustainability risks, i.e. environmental, social and governance risks in the investment decision or advisory processes as part of duties towards policy-holders, customers and/or beneficiaries. EIOPA is invited to consider amendments, including but not limited to, Commission Delegated Regulation 2015/35<sup>3</sup>, Commission Delegated Regulation 2017/2358<sup>4</sup> and Commission Delegated Regulation 2017/2359<sup>5</sup>. Where necessary for the achievement of consistency across sectors, EIOPA and ESMA are invited to also consider Article 135(1)(a) of the Solvency II Directive for potential new level 2 measures.

With this mandate to ESMA, the Commission seeks ESMA's technical advice on potential amendments to delegated acts adopted pursuant to:

- Articles 12(3), 14(2) and 51(4) of Directive 2009/65/EC<sup>6</sup> (hereafter, UCITS Directive),
- Articles 12(3), 14(4), 15(5), 18(2) and 19(11) of Directive 2011/61/EU<sup>7</sup> (hereafter, AIFMD),
- Articles 16(12), 23(4) and 24(13) of Directive 2014/65/EU<sup>8</sup> (hereafter, MiFID II)

in order to explicitly require the integration of sustainability risks, i.e. environmental, social and governance risks in the investment decision or advisory processes as part of duties towards investors and/or clients. ESMA is invited to consider amendments to, including but not limited to, Commission Directive 2010/43/EU<sup>9</sup>, Commission Delegated Regulation 2013/231/EU<sup>10</sup>, Commission Delegated

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<sup>1</sup> Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335 17.12.2009, p. 1).

<sup>2</sup> Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (IDD) (OJ L 26 2.2.2016, p.19).

<sup>3</sup> Commission Delegated Regulation 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.1.2015, p. 1).

<sup>4</sup> Commission Delegated Regulation 2017/2358 of 21 September 2017 supplementing Directive (EU) 2016/97 with regard to product oversight and governance requirements for insurance undertakings and insurance distributors (OJ L 341, 20.12.2017, p. 1).

<sup>5</sup> Commission Delegated Regulation (EU) 2017/2359 of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products (OJ L 341, 20.12.2017, p. 8).

<sup>6</sup> Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302 17.11.2009, p. 32).

<sup>7</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174 1.7.2011, p. 1).

<sup>8</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

<sup>9</sup> Commission Directive 2010/43/EU implementing Directive 2009/65/EC as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company (OJ L 176, 10.7.2010, p. 42).

<sup>10</sup> Commission Delegated Regulation 231/2013 supplementing Directive 2011/61/EU with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision (OJ L 83, 22.3.2012, p. 1).

Regulation (EU) 2017/565<sup>11</sup> and Commission Delegated Directive (EU) 2017/593<sup>12</sup>. When considering rules on target market assessment in Commission Delegated Directive 2017/593 and Commission Delegated Regulation 2017/2358, EIOPA and ESMA are invited to consider sustainability risks and other sustainability factors.<sup>13</sup>

Potential delegated acts should be adopted in accordance with Article 290 of the Treaty on the Functioning of the European Union. The Commission requests that EIOPA and ESMA deliver their respective advices by 30 April 2019.

Given the very close links between the rules at stake, the Commission invites both EIOPA and ESMA to closely liaise with and consult each other in the preparation of their technical advices with the aim of ensuring consistency across sectors.

In accordance with the principles of Better Regulation, the Commission must provide an impact assessment to accompany delegated acts. EIOPA and ESMA are therefore requested, in addition to the technical advices on the content of the delegated acts, to justify their advices. This should include identification of the range of policy options available, details of any mapping exercise of sectoral legislation used to formulate those policy options and an assessment of the costs and benefits of each. The results of this assessment should be submitted at the same time as the advices.

## **2. The context**

Sustainability has long been at the heart of the European project. Following the adoption of the 2016 Paris agreement on climate change and the United Nations 2030 Agenda for Sustainable Development, the Commission has expressed in the Action Plan: Financing Sustainable Growth<sup>14</sup> its intention to clarify so-called fiduciary duties and increase transparency in the field of sustainability risks and sustainable investment opportunities with the aim to

- reorient capital flows towards sustainable investment in order to achieve sustainable and inclusive growth;
- assess and manage relevant financial risks stemming from climate change, resource depletion, environmental degradation and social issues; and
- foster transparency and long-termism in financial and economic activity.

Consequently, the Commission adopted several legislative proposals on sustainable finance on 24 May 2018, including a proposal for a Regulation on disclosures relating to sustainable investments and sustainability risks<sup>15</sup> and targeted amendments to Commission Delegated Regulation (EU) 2017/565 and Commission Delegated Regulation (EU) 2017/2359 to increase disclosures of environmental, social and governance-related (hereafter, ESG) information and to integrate ESG-related preferences into the suitability assessment. The Commission launched public consultations to seek stakeholders' feedback on amendments to Commission Delegated Regulation 2017/565 and Commission Delegated Regulation 2017/2359 to include ESG considerations when investment or insurance advice is provided. Following the public consultations, the Commission intends to adopt the amendments.

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<sup>11</sup> Commission Delegated Regulation (EU) 2017/565 supplementing Directive 2014/65/EU as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 87, 31.3.2017, p. 1).

<sup>12</sup> Commission Delegated Directive (EU) 2017/593 supplementing Directive 2014/65/EU with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits (OJ L 87, 31.3.2017, p. 500).

<sup>13</sup> Sustainability factors encompass sustainability risks and opportunities.

<sup>14</sup> Communication from the Commission to the European Parliament, to the European Council, the Council, The European Central Bank, the European Economic and Social Committee, and the Committee of the Regions Action Plan: Financing Sustainable Growth (COM(2018)097 final).

<sup>15</sup> Proposal for a regulation on disclosures relating to sustainable investments and sustainability risks and amending Directive (EU) 2016/2341 (COM(2018)354).

When developing the technical advices under this mandate, EIOPA and ESMA are invited to keep in mind that a potential delegated regulation under the IORPs Directive<sup>16</sup> might be adopted, once and if the related empowerment as proposed in the Commission Proposal for a regulation on disclosures relating to sustainable investments and sustainability risks and amending the IORPs Directive is in place.<sup>17</sup>

With this mandate to EIOPA and ESMA the Commission seeks technical advices on potential amendments to delegated acts under the UCITS Directive, AIFMD, MiFID II and IDD with regard to the integration of sustainability risks and sustainability factors.

## 2.1. Scope

Investment funds, life insurance products, or portfolio management services invest capital of policyholders, investors, clients, customers or beneficiaries, as defined in the Directives referred to in Section 1 (hereafter, clients). Investment or insurance advice helps clients make investment decisions related to asset allocation, taking into account, among other things, their investment objectives and risk profile. Likewise, portfolio managers manage client portfolios with mandates given by clients on a discretionary client-by-client basis, taking into account *inter alia* client's individual investment objectives.

While existing rules in the UCITS Directive, the Solvency II Directive, AIFMD and MiFID II require

- life insurance undertakings authorised in accordance with Article 14 of the Solvency II Directive;
- AIFMs as defined in Article 4(1)(b) of AIFMD;
- investment firms as defined in Article 4(1)(1) of MiFID II which provide portfolio management;
- UCITS management companies as defined in Article 2(1)(b) of the UCITS Directive or investment companies referred to in that Directive

(hereinafter, financial market participants) to act in the best interest of their clients and provide scope for integrating sustainability risks, financial market participants do not systematically consider and integrate them in a consistent way in their investment decision processes.

Similarly, when investment or insurance advice is provided to clients, both MiFID II and IDD require investment firms as defined in Article 4(1)(1) of MiFID II and insurance distributors as defined in Article 2(1)(8) of IDD to act in the best interest of their clients without explicitly mandating the integration of sustainability factors within the advisory process. In consequence, the amendments to Commission Delegated Regulation 2017/565 and Commission Delegated Regulation 2017/2359 proposed on 24 May 2018 seek to clarify that ESG considerations must be integrated in relevant advisory processes, including suitability assessments. These amendments, however, do not address organisational requirements such as, *inter alia*, risk management, board responsibility or target market assessment, which are addressed in this request.

The Commission, under the empowerments laid down in the UCITS Directive, AIFMD, MiFID II, Solvency II Directive and IDD specified in Section 1, adopts measures specifying the details of organisational requirements, risk management, rules of conduct and target market assessment that

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<sup>16</sup> Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ L 354, 23.12.2016, p. 37).

<sup>17</sup> The amendment empowers the Commission to specify in delegated acts, in accordance with Article 290 TFEU, the 'prudent person' rule with respect to the consideration of environmental, social and governance risks and the inclusion of environmental, social and governance factors in internal investment decisions and risk management processes. Since governance and risk-management rules under Directive (EU) 2016/2341 already apply to investment decisions and risks assessments, including environmental, social and governance considerations, the activities and underlying processes of IORPs should be informed to comply with the delegated acts. The delegated acts should ensure consistency, where relevant, with delegated acts adopted under Directive 2009/65/EC, Directive 2009/138/EC and Directive 2011/61/EU.

require financial market participants and investment firms and insurance distributors that provide investment or insurance advice within the meaning of Article 4(1)(4) of MiFID II and Article 2(1)(15) of IDD respectively (hereinafter, investment and insurance advisors) to act in the best interest of their clients. The Commission intends to rely on these empowerments in order to amend the current delegated acts or, where necessary for the achievement of consistency across sectors, to introduce new measures under Article 135(1)(a) of the Solvency II Directive so as to specify how sustainability risks or, where relevant, factors must be integrated in organisational requirements, operating conditions, risk management and target market assessment in product governance of the financial market participants, investment and insurance advisors.

Whilst the existing empowerments require specifying the measures to be put in place by the relevant financial market participants and investment and insurance advisors to ensure the fulfilment of their duties, there is no distinction as to the type of risk to be taken into account. The current delegated acts do not explicitly specify how to consider the financial impact of sustainability risks on portfolios or recommendations. Sustainability risks may have an impact on portfolio performance and so affect the ability of relevant financial market participants to meet their obligations.

The Impact Assessment Report<sup>18</sup> accompanying the Commission legislative proposals on sustainable finance of 24 May 2018 suggests<sup>19</sup> that the integration of sustainability risks is not a common practice as it is hampered by the existing legal uncertainty as to what is expected from relevant financial market participants and investment and insurance advisors. Some of these entities do not analyse sustainability risks and their impacts on returns either because they do not have the tools and the sustainability-related knowledge or because they confuse the integration of sustainability risks with ethical investing, which implies accepting lower risk-adjusted returns, which would not be in the best interest of their clients.

The Commission is therefore seeking the EIOPA and ESMA technical advices on how and where financial market participants are to integrate relevant sustainability risks within their business models and relevant procedures in the areas of

- organisational requirements, including risk management and governance,
- operating conditions, in particular investment strategy and asset allocation, and
- risk management

taking into account the size, nature, scale and complexity of their activities.

In addition, for investment and insurance advisors, the EIOPA and ESMA technical advices should provide details on how and where sustainability risks and other sustainability factors are to be integrated within the procedures in the area of target market assessment.

## **2.2. Principles that EIOPA and ESMA should take into account**

In providing their technical advices, EIOPA and ESMA should consider the following principles:

- **Compliance with the requirements of the EIOPA Regulation (EU) No 1094/2010<sup>20</sup> and the ESMA Regulation (EU) No 1094/2010<sup>21</sup> respectively.**

EIOPA and ESMA should not feel restricted on their reflections to elements they consider should be addressed by the amendments or, where relevant, new rules but if they find it appropriate, they

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<sup>18</sup> SWD(2018) 264 final.

<sup>19</sup> Proposal for a Regulation of the European Parliament and of the Council on disclosures relating to sustainable investments and sustainability risks and amending Directive (EU) 2016/2341 (COM(2018) 354 final).

<sup>20</sup> Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

<sup>21</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p.84).



may develop guidelines or recommendations that they believe should accompany the proposed measures to better ensure the effectiveness of the integration of sustainability risks in the given frameworks, i.e. remuneration.

- **Autonomy in working methods:** both EIOPA and ESMA will determine their own working methods depending on the provisions being dealt with. Both EIOPA and ESMA should closely liaise with and consult each other in the preparation of the technical advices to ensure consistency across sectors. EIOPA and ESMA should ensure coherence of different standards of work being carried out by the various expert groups and might consider establishing a joint working platform or relying on some of the mechanisms developed by the Joint Committee, including an option of a joint technical advice.
- **Internal Market:** the need to ensure the proper functioning of the internal market and to improve the conditions of its functioning, in particular with regards to the financial markets, and a high level of investor protection.
- **Proportionality:** the technical advices should not go beyond what is necessary to achieve the objectives of the delegated acts. Moreover, for each specific technical advice, EIOPA and ESMA should consider the proportionality of the proposed amendments or, where relevant, new rules in order to ensure that the technical advices are commensurate to the nature, scale and complexity of relevant entities.
- **Comprehensiveness:** EIOPA and ESMA should provide comprehensive technical advices on all subject matters covered by the mandate.
- **Coherence:** while preparing their technical advices, EIOPA and ESMA should ensure coherence within the wider regulatory framework of the Union. The aim is to attain a level of harmonisation where EU legislation does not need additional requirements at the national level.
- **Consultations.**

EIOPA and ESMA are invited to consult market participants (i.e. financial market participants, investment and insurance advisors, practitioners, consumers and end-users) in an open and transparent manner. EIOPA and ESMA should consider the joint organisation and launch of the consultations to benefit from the synergies and consistency.

EIOPA and ESMA should provide technical advices which take account of different opinions expressed by the market participants during their consultation. They should provide a feedback statement on the consultation justifying its choices *vis-à-vis* the main arguments raised during the consultation.
- **Evidenced and justified.**

EIOPA and ESMA should justify their technical advices by identifying, where relevant, a range of technical options and undertaking an evidenced assessment of the costs and benefits of each. The results of this assessment should be submitted alongside the technical advices to assist the Commission in preparing its legislative proposals. Where administrative burdens and compliance costs on the side of the industry could be significant, EIOPA and ESMA should, where possible, quantify these costs.

EIOPA and ESMA should provide sufficient qualitative evidence and where possible factual data backing the analyses and gathered during their assessment. To meet the objectives of this mandate, it is important that the presentation of the technical advices makes maximum use of the qualitative evidence and data gathered and enables all stakeholders to understand the overall impact of the potential delegated acts.

EIOPA and ESMA should provide comprehensive technical analysis on the subject matters described below, covered by the empowerments included in the relevant provisions of the Directives referred to in Section 1 above, in the corresponding recitals, Impact Assessment Report accompanying the Commission legislative proposals on sustainable finance of 24 May 2018 as well as in the relevant Commission's requests included in this mandate.
- **Clarity:** the technical advices should contain sufficient and detailed explanations for the assessment done, and be presented in an easily understandable language respecting current legal terminology used at Union level.

- **Technical advices, not legislation.**

EIOPA and ESMA technical advices should not take the form of a legal text. However, they should provide the Commission with a clear and structured text, accompanied by sufficient and detailed explanations for the advices, and which are presented in an easily understandable language respecting current terminology used in the relevant sectorial rules and fields of the financial services markets.

The technical advices should specify the details on how the provisions, including their enumeration, should be amended or, where relevant, new rules introduced.

The technical advices should ensure consistency with each other, while recognizing, where relevant, the differences in terminology.

- **Responsive:** EIOPA and ESMA should address to the Commission any question it might have concerning the clarification of the applicable rules at stake, which it should consider of relevance to the preparation of their technical advices.

### **3. Procedure**

The Commission requests the technical advices of EIOPA and ESMA for the purpose of the preparation of the delegated acts regarding the issues described in Section 4 of the mandate.

The Commission reserves the right to revise and/or supplement this mandate if needed. The technical advices received on the basis of this mandate should not prejudice the Commission's final decision.

The mandate follows the Communication from the Commission to the European Parliament and the Council – Implementation of Article 290 of the Treaty on the Functioning of the European Union<sup>22</sup>, the EIOPA and ESMA Regulations and the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on better law-making (hereinafter, Interinstitutional Agreement)<sup>23</sup>.

The European Parliament and the Council have been duly informed about this mandate.

After the delivery of the technical advices by EIOPA and ESMA, in accordance with the Annex to the Interinstitutional Agreement, signed on 13 April 2016, the Commission will continue to consult experts designated by the Member States in the preparation of draft delegated acts.

The Commission services will state the conclusions they have drawn from the discussions of any meeting with Member States' experts on draft delegated acts, including how they will take the experts' views into consideration and how they intend to proceed. When they consider this necessary, the European Parliament and the Council may each send experts to these meetings. When preparing and drawing up the delegated acts, the Commission will ensure a timely and simultaneous transmission of all documents, including the draft acts, to the European Parliament and the Council at the same time as Member States' experts.

As soon as the Commission adopts delegated acts, it will simultaneously notify them to the European Parliament and the Council.

## **4. Issues on which EIOPA and ESMA are invited to provide technical advices**

### **4.1. Organisational requirements**

Organisational requirements in delegated acts adopted under Articles 12(3) and 14(2) of the UCITS Directive (i.e. Commission Directive 2010/43/EU), Article 50(1)(a) and (b) of the Solvency II Directive (i.e. Commission Delegated Regulation 2015/35), Articles 12(3) and 18(2) of AIFMD (i.e. Commission Delegated Regulation 2013/231/EU), Articles 16(12) and 23(4) of MiFID II (i.e. Commission Delegated Regulation (EU) 2017/565 and Commission Delegated Directive (EU) 2017/593) and Article 28(4) of IDD (i.e. Commission Delegated Regulation 2017/2359) do not

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<sup>22</sup> Communication from the Commission to the European Parliament and the Council - Implementation of Article 290 of the Treaty on the Functioning of the European Union (COM(2009) 673 final).

<sup>23</sup> Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L123, 12.05.2016, p.1).



currently explicitly require the integration of sustainability risks. Where necessary for the achievement of consistency across sectors, EIOPA and ESMA are invited to also consider Article 135(1)(a) of the Solvency II Directive for potential new level 2 measures.

EIOPA and ESMA are invited to provide technical advices on corporate governance mechanisms within the organisation of the financial market participants and investment and insurance advisors, including, where relevant, but not limited to:

- The tasks and the role of the risk-management function or procedures for risk assessment, the compliance function, the internal control function or system, the internal audit function and/or the actuarial function in the system of governance and tasks or responsibilities of bodies that undertake the management and supervisory functions in the corporate governance in relation to sustainability risk limits and overseeing their implementation;
- steps of procedures and processes to ensure the effectiveness and adequacy of sustainability risk integration;
- skill, expertise and knowledge required for the assessment of sustainability risks;
- regular reviews of the mechanisms put in place to integrate sustainability risks and regular internal reporting;
- adequate support to (e.g. analysis, research and legal advice), and resources across, all relevant functions and where several functions are involved in the integration of sustainability risks, the requirements on cooperation with each other; and
- measures and policies specifically considering types of conflict of interest that might arise in relation to sustainability considerations and the steps to identify, prevent, manage and disclose them.

Adapting processes, systems and internal controls to reflect sustainability risks is relevant in order to build the technical capacity and knowledge to analyse sustainability risks and ensure that the investment and advisory process is properly implemented and adhered to over time.

The technical advices should be consistent with each other, while recognizing, where relevant, the difference in terminology used by the Solvency II Directive, the UCITS Directive, the AIFMD and MiFID II. With regard to MiFID II, it should be clear that these requirements should only apply for investment firms as defined in Article 4(1)(1) of MiFID II which provide portfolio management and/or investment advice. The technical advices should map the provisions of delegated acts that should be amended.

## **4.2. Operating conditions**

Operating conditions in delegated acts adopted under Articles 12(3) and 14(2) of the UCITS Directive (i.e. Commission Directive 2010/43/EU), Article 50(1)(a) of the Solvency II Directive (i.e. Commission Delegated Regulation 2015/35) and Articles 12(3), 14(4) and 18(2) of AIFMD (i.e. Commission Delegated Regulation 2013/231/EU) do not establish the details of the integration of sustainability risks within the conduct of business or prudent person rules and due diligence requirements.

Financial market participants therefore should (i) define an investment strategy, (ii) where relevant, identify a proper asset allocation which clarifies how clients' money is allocated in accordance with the investment strategy, (iii) undertake proper due diligence in the selection and monitoring of investments, and (iv) ensure that the portfolios remain in line with the investment strategy and, where relevant, the asset allocation, while integrating sustainability risks.

The technical advices on the amendments of the respective delegated acts should be consistent with each other, while recognizing, where relevant, the difference in terminology used by the Solvency II

Directive, the UCITS Directive and AIFMD. The technical advices should map the provisions of delegated acts that should be amended.

### **4.3. Risk management**

In line with the Delegated Acts adopted under Article 51(4) of the UCITS Directive, Article 50(1)(a) and (b) of the Solvency II Directive, Articles 15(5) and 19(11) of AIFMD and Article 16(12) of MiFID II risk management systems or procedures for risk assessment should be in place to monitor risks to which they are exposed. Financial market participants must employ risk-management processes which enable them to measure and manage at any time the risk of the positions and their contribution to the overall risk profile. Risk assessments should consider both financial and relevant sustainability risks. The valuation processes should therefore ensure a proper degree of consideration of relevant/material sustainability risks. The technical advices should describe the elements needed to ensure that financial market participants take into account sustainability risk effectively as well as the tasks to be fulfilled by the relevant functions, such as risk management function, in this respect.

The technical advices on the amendments of the respective delegated acts should be consistent with each other, while recognizing, where relevant, the difference in terminology used by the Solvency II Directive, the UCITS Directive, AIFMD and MiFID II. The technical advices should map the provisions of delegated acts that should be amended.

### **4.4. Target market assessment**

The conditions to identify a target market in Commission Delegated Directive 2017/593 adopted under Articles 16(12) and 24(13) of MiFID II and Commission Delegated Regulation 2017/2358 adopted under Article 25(2) of IDD do not explicitly establish the details of the integration of sustainability factors by investment firms manufacturing financial instruments and their distributors and insurance undertakings, intermediaries manufacturing insurance products for sale to customers and insurance distributors referred to in Article 2 of Commission Delegated Regulation 2017/2358 respectively

In order to ensure that products and, where relevant, the related services are offered in the interest of clients and that sustainability factors are taken into account in the target market assessment, EIOPA and ESMA should analyse the relevant changes to Commission Delegated Regulation 2017/2358, in particular Articles 5 to 11, and Commission Delegated Directive 2017/593, in particular Articles 9(9), 9(11), 10(2) and 10(5).

This approach should duly consider the existing ESMA Guidelines on MiFID II product governance requirements<sup>24</sup> that already provide a good indication on how sustainability factors should be taken into account when identifying the target market. ESMA should ensure that changes to the definition of the target market do not lead to miss-selling practices, e.g. by clearly identifying investment objectives and ESG constraints. In addition, the possibility to identify a target market for clients without ESG preferences should be maintained. When establishing a requirement to consider sustainability factors under the client's objectives and needs, EIOPA and ESMA should also take into account existing practices for the identification of the target market.

The technical advices should be consistent with each other, while recognizing, where relevant, the difference in terminology used in IDD and MiFID II. The technical advices should map the provisions of delegated acts that should be amended.

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<sup>24</sup> ESMA35-43-620