



Frankfurt am Main,  
3 July 2020

## **BVI's comments on the draft Commission Delegated Regulation as regards the sustainability risks and sustainability factors to be taken into account by AIFM and for UCITS**

The EU Action Plan for facilitating sustainable growth and the multiple initiatives resulting therefrom will significantly impact the EU regulatory environment for financial services. BVI<sup>1</sup> is fully supportive of creating an enabling framework for sustainable investments that will facilitate the transition to a more sustainable European economy. Our members are willing to contribute to the ultimate objective of “shifting the trillions” by increasing their offerings of sustainable investments resulting in a wide range of investment solutions that suit different client needs.

However, in order to create an enabling environment, it is of essential importance to keep the right balance in terms of regulation and to achieve consistency in terms of both outcome and timing. This pertains specifically to the current situation involving multiple regulatory initiatives in the area of sustainable finance that are simultaneously underway. Without consistent timelines for implementation and convergence of underlying concepts, the idea of an enabling “smart” regulation will not materialise.

Against this background, we have the following requests with regard to the proposed Level 2 measures for UCITS and AIFM:

- 1. The timelines for implementing substantive requirements for investment funds in terms of integrating sustainability risks and principal adverse impact must be aligned with the disclosure requirements under SFDR:** The proposed requirements for integrating sustainability risks in the internal organisation of UCITS managers and AIFM and especially the investment process must not be seen in isolation. They interact with other measures triggered under the EU Action Plan in order to facilitate sustainable finance and specifically, will form the substantive foundation for the disclosure duties applicable to UCITS and AIF under SFDR. In particular, information about the processes for integrating sustainability risk into investment decisions and the results of the relevant assessment foreseen in Article 6(1) SFDR can only be reasonably required after the application of the relevant material standards for UCITS and AIF. The same applies to the consideration of principal adverse impact that shall be taken into account the investment process for UCITS and AIF, but also needs to be disclosed under SFDR.

Taking into account the regulatory process for the adaptation of the Level 2 measures at hand and the foreseen transition period of 11 months, the proposed amendments to the UCITS and AIFMD Delegated Acts will not become effective before Q4 2021. The disclosure obligations under SFDR, however, are supposed to enter into force by 10 March 2021.

This sequencing of events only adds to the severe challenges with SFDR implementation. The other difficulties pertain to the fact that specifications at Level 2 of SFRD will be only available after

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<sup>1</sup> BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Asset Managers act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI's 114 members manage assets more than 3 trillion euros for retail investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 22%, Germany represents the largest fund market in the EU. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit [www.bvi.de/en](http://www.bvi.de/en).



the entry into force of the Level 1 framework. Moreover, ESG disclosures under SFDR still need to be complemented by Taxonomy-related information for funds offered as sustainable that shall lead to further adaptations of the Level 2 measures but will become effective only by 1 January 2022.

**In view of these challenges, we are strongly in favour of extending the date of application of the SFDR regime to 1. January 2022 in order to allow for an orderly implementation of all new ESG-related rules for investment funds.** In the context of the current consultation, such postponement would warrant that adaptations of internal processes and organisational measures are in place before the application of SFDR and form a tangible basis for fund-related ESG disclosures.

2. **Sustainability risk must not be considered a fully separate risk type.** We welcome the clear reference to the definition of sustainability risk in Article 2(22) SFDR. At the same time, there is a need for a common understanding that a sustainability risk is not a separate risks type. It is important to understand that the concept of an assessment of sustainability risks as part of the risk management process is not a new stand-alone risk element, but rather a specific sub-set of other relevant financial risks. Otherwise, a distinction from other risk types would be extremely difficult. To put it differently: sustainability risk is risk inherent in a portfolio due to sustainability factors. Therefore, as it stands, sustainability risk in investment funds is in general not identified and measured separately from other risks. Rather, it is included into the exposure to other relevant risks or considered part of the price valuation of portfolio assets.

**Illustrative example:** An investment fund invests in shares of an oil company which shows no interest to engage in the development of alternative fuels. This is relevant in terms of sustainability risk, but also impacts the market value of the company's shares, thus potentially resulting in a market risk for sustainability reasons.

Sustainability risks may have a material impact on all the existing financial risk types (such as market, liquidity, counterparty and other relevant risks) as a factor that contributes to their materiality. In order to anchor this approach in the context of Level 2 measures, it would be appropriate to clarify recital 3 of the drafted Delegated Acts as follows

'[...] Management companies should therefore assess ***not only*** all relevant financial risks on an ongoing basis, ***but also including*** all relevant sustainability risks as referred to in Regulation (EU) 2019/2088 that, where they occur, could cause an actual or potential material negative impact on the value of an investment. [...]

and to add the following references to Article 3 point 11 of the Directive 2010/43/EU (UCITS Level 2) and Article 1(6) of the Delegated Regulation (EU) No 231/2013 (AIFMD Level 2):

... 'sustainability risk' means sustainability risk as defined in Article 2, point (22), of Regulation (EU) 2019/2088 of the European Parliament and of the Council ***that should be considered a subset of other financial risks.***

3. **Integration of sustainability risk and principal adverse impact should be commensurate to the availability of relevant ESG data.** At the current stage, approaches in the market for the measurement of sustainability risk are not fully standardised and the quality of available data still needs improvement with respect to comparability and reliability. Furthermore, data on long-term risk aspects is still scarce. Identification of a specific exposure of a fund portfolio to sustainability risk



will thus be a challenging exercise. In this context, we would like to highlight the Eurosystem reply<sup>2</sup> from the ECB to the European Commission’s public consultation on the Renewed Sustainable Finance Strategy and the revision of the Non-Financial Reporting Directive which clearly states a need to improve the quality of sustainability and climate-related information. In particular, the ECB emphasises that available sustainability and climate-related data and scores suffer from a lack of standardisation and comparability. Moreover, in the absence of a consistent set of publicly available corporate-level information, the metrics developed by market data providers seek to consolidate the (limited) quantitative and qualitative environmental information provided by companies. The ECB highlights that situation as **an impediment to the consistent use of ESG data by financial institutions and market participants and stresses that unreliable ESG data and ratings limit users in their capacity to conduct granular financial risk analyses.**

Therefore, we expressly request to acknowledge within the Level 2 requirements (for instance as a recital) that the capability of UCITS and AIF management companies to account for sustainability risk within their risk management arrangements depends to a great extent upon the availability of public, transparent, relevant and reliable data related to ESG considerations.

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<sup>2</sup> Available under the following link: [https://www.ecb.europa.eu/pub/pdf/other/ecb.eurosystemreplyeuropeancommission-publicconsultations\\_20200608~cf01a984aa.en.pdf](https://www.ecb.europa.eu/pub/pdf/other/ecb.eurosystemreplyeuropeancommission-publicconsultations_20200608~cf01a984aa.en.pdf).