

Position of the European Financial Congress¹ in relation to the European Securities and Markets Authority's consultation paper on integrating sustainability risks and factors in UCITS Directive and AIFMD²

Methodology for preparing the answers

The answers were prepared in the following stages:

Stage 1

A group of experts from the Polish financial sector were invited to participate in the survey. They received selected extracts of the ESMA's consultation paper and the consultation questions. The experts were guaranteed anonymity.

Stage 2

Responses were obtained from experts representing:

- commercial banks,
- investment funds,
- regulatory bodies,
- consulting firms.

Stage 3

The survey project coordinators from the European Financial Congress prepared a draft synthesis of opinions submitted by the experts. The draft synthesis was sent to the experts participating in the survey with the request to mark the passages that should be modified in the final position and to propose modifications and additions as well as marking the passages they did not agree with.

Stage 4

On the basis of the responses received, the final version of the European Financial Congress' answers was prepared.

¹ European Financial Congress (EFC – www.efcongress.com). The purpose of the EFC is to promote debate on how to ensure the financial security and sustainable development of the European Union and Poland.

² <https://www.esma.europa.eu/press-news/consultations/consultation-integrating-sustainability-risks-and-factors-in-ucits>

Answers of the European Financial Congress to the consultation questions

Q2: Do you agree with the proposed amendments relating to organizational 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.

Yes. The proposed approach is appropriate. A more granular approach would complicate the process. A separate thing is whether this approach is not too restrictive and whether factors such as ESG should be taken into account, if the UCITS or AIF management company provides services that take these factors into account. The level of sensitivity to ESG factors varies between Member States. For this reason, imposing a strict obligation to have these factors incorporated in the activities of management companies does not seem to be the right approach. It seems more appropriate to apply an approach based on general principles and conditioned by the actual incorporation of ESG factors in the services/ products offered.

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)?

There is no such need in our opinion. A general requirement to develop and implement appropriate policies would consume the obvious need for having properly qualified staff.

Q4: Would you propose any other amendments to the provisions on organizational 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?

We do not see such a need.

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.

No. Sustainability is addressed here in the same way as easy-to-measure credit, liquidity, market and legal risks/ criteria. Certainly, sustainability topics must be regulated and implemented by the Member States, e.g. through environmental standards or educational activities addressed to investors and the public.

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.

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 need to add a new recital in this regard is hardly obvious. While there are some arguments in favour of separating conflicts related to sustainability risk from other identified conflicts due to the differences in the two categories of risk indicated by ESMA, a separate article dealing with this topic is not necessary.

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?

We do not see such a need.

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.

No. The sustainability aspect, should it be implemented in the proposed wording, should not be integrated with the risk management function. The more so as the system for classifying such issues has not been finalised yet, and including them in the activities of UCTIS and AIF management companies would entail significant financial outlays to identify them.

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.)?

We are not convinced. Linking risk management with soft issues, dilutes management attention and drives precious resources into controlling the issues which are not really substantial in terms of market mechanics.

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)?

Such a solution might be considered, but not all the elements specified in the parentheses in the question should be referred to.

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?

In connection with the arguments mentioned above, it does not seem appropriate to extend regulation in this regard.

General comments:

We express our concern about the proposed 'package' of legislative changes. While addressing significant topics (the intention of which we accept in principle), on a high level we doubt their effectiveness, efficiency and purposefulness, especially at the current stage of development of the Polish market and the advancement of non-harmonised methods of ESG assessment used in the market. Such a situation might obscure and make it more difficult to assess the client and the investor rather than increase the comparability and transparency of the market.

In particular, knowing the current EU regulatory practices, and having experience of how they work in practice, we believe that the proposed high-level provisions will be supplemented by delegated regulations, technical standards and guidance, the form of which is currently unknown, but which, in our opinion, should be given the same consideration as the proposals already on the table. In addition, we have concerns about the implementation of the high-to-measure and not-yet-defined sustainability risk into law as a risk akin to measurable risks, such as market risk or liquidity risk. All the proposed changes introduce exactly the same legislative and organisational solutions (in terms of design of the proposed provisions in relation to managing, monitoring, reporting and division of tasks).