

MEMO# 33099

February 8, 2021

EU ESG: Final Response to Commission Consultation on Sustainable Corporate Governance Legislation

[33099]

February 8, 2021 TO: ICI Global Members

ESG Task Force

EU ESG Disclosure Regulation Working Group

ICI Global Regulated Funds Committee SUBJECTS: ESG

International/Global

MiFID, EMIR, AIFMD, UCITS V RE: EU ESG: Final Response to Commission Consultation on Sustainable Corporate Governance Legislation

We filed the attached response to the European Commission's consultation on an upcoming legislative initiative to embed sustainability into the corporate governance framework, taking a more stakeholder-centric approach.[\[1\]](#) The consultation is focused on corporate issuers, but the forthcoming legislation is expected to broadly scope in the financial sector.

Our response focused on two questions, from the perspective of how any new legislative requirements would apply to fund managers. Below is a brief summary of the consultation and our draft response. Also attached is a more detailed analysis of the forthcoming legislative initiative, including the expected direction of travel based on two Commission studies and a recent European Parliament resolution.

The consultation consists of 26 questions (see attached summary) with two main areas of focus:

1. **Expanding directors' duty of care to take into account all stakeholders' interests;** and
2. **Mandating that companies adopt due diligence processes to address adverse sustainability impacts in their supply chains.**

Although this consultation does not directly scope in funds, we are concerned that the Commission could draw these requirements broadly and inadvertently impact fund management activities that are not the target of this legislation and that are already covered by other existing requirements.

In particular, we have significant concerns about the potential requirements around

companies' supply chain due diligence processes. The Commission intends to build this initiative on the OECD Guidelines for Multinational Enterprises and its Due Diligence Guidance for Responsible Business Conduct—which were also the basis for the Sustainable Finance Disclosure Regulation (SFDR) due diligence provisions on “adverse impact” on sustainability.

Our response focuses on the following two essential points for the Commission to consider as it drafts the legislation:

- **Question 14: Definition of “due diligence duty.”** We emphasize that SFDR and forthcoming amendments to Delegated Acts under the UCITS and AIFMD frameworks will impose significant new due diligence requirements with respect to adverse sustainability impacts of investment decisions. It is essential that any new legislative requirements for supply chain due diligence do not duplicate or conflict with the investment due diligence provisions to which asset managers will be subject. We caution that the application of additional due diligence requirements not tailored for fund management could severely disrupt the investment process, harming investors saving for retirement, education, and other important financial goals.
- **Question 21: Remuneration of directors.** We urge the Commission to ensure that any new remuneration rules do not duplicate or conflict with the extensive remuneration rules to which fund managers are subject in the UCITS Directive and AIFMD as well MiFID/IFR frameworks. We note these rules are carefully tailored for the fund management context and are designed to align the interests of fund managers with the long-term interests of shareholders.

Next steps. The Commission is expected to publish proposed legislation on sustainable corporate governance later this spring. At that point, the proposed text will go to the European Parliament and European Council for negotiation.

This initiative is intended to go hand-in-hand with the Commission's review of the Non-Financial Reporting Directive (NFRD), expected in spring 2021. The NFRD requires companies to report on their social and environmental policies and due diligence processes if they have them, or otherwise explain why they do not have any (comply or explain approach). The sustainable corporate governance legislation is intended to supplement the NFRD reporting obligation with a corresponding substantive conduct obligation.

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[Attachment No. 1](#)

[Attachment No. 2](#)

endnotes

[1] The consultation is *available* at <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance/public-consultation>.

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