

MEMO# 33078

February 1, 2021

FOR REVIEW: EU ESG: Draft Response to Commission Consultation on Sustainable Corporate Governance

[33078]

February 1, 2021 TO: ESG Task Force

EU ESG Disclosure Regulation Working Group

ICI Global Regulated Funds Committee RE: FOR REVIEW: EU ESG: Draft Response to Commission Consultation on Sustainable Corporate Governance

The European Commission is currently consulting on an upcoming legislative initiative to embed sustainability into the corporate governance framework.[\[1\]](#) In the Commission's view, this sustainable corporate governance legislative initiative (likely a directive) is needed to shift companies away from focusing on short-term gains for shareholders and instead toward a stakeholder-centric approach that considers a company's environmental, social, human, and economic impact.

The consultation is focused on corporate issuers, but the forthcoming legislation is expected to broadly scope in the financial sector.

Summary. 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.

ICI’s response. Our draft response targets making the following two essential points for the Commission to consider as it drafts the legislation:

1. **Question 14: Definition of “due diligence duty.”** We emphasize that SFDR and forthcoming amendments to Delegated Acts under the UCITS and AIFMD frameworks already impose due diligence requirements with respect to adverse sustainability impacts of investment decisions. It is essential that any new legislative “due diligence” requirements do not inadvertently scope in investment due diligence. We caution that the application of broad 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.
2. **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.

Attached is our draft response as well as a more detailed analysis of the consultation, including the likely direction of travel of the legislation based on two Commission studies and a recent European Parliament resolution. **Please provide any comments by COB this Thursday, 4 February.** The consultation is due next Monday, 8 February.

Next steps. The Commission is expected to publish proposed legislation on sustainable corporate governance proposal in Q2 this year. At that point, the proposed text will go to the European Parliament and European Council for negotiation.

Linda M. French
Assistant Chief Counsel, ICI Global

Anna Driggs
Director and Associate Chief Counsel
ICI Global

[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>.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.