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BANKING AND FINANCE

Public consultation on institutional investors and asset managers' duties regarding sustainability

Fields marked with * are mandatory.

Introduction

At the end of 2015, governments from around the world chose a more sustainable path for our planet and our economy by adopting the Paris agreement on climate change and the UN 2030 Agenda for Sustainable Development.

Sustainability has since long been at the heart of the European project. The EU is committed to development that meets the needs of the present without compromising the ability of future generations to meet their own needs (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'Next steps for a sustainable European future European action for sustainability' {SWD(2016) 390 final}).

The EU wants its financial system to be aligned with its sustainability objectives. The commitment to incorporating sustainability elements into EU financial services policies and cross cutting initiatives is ingrained in the Mid-Term Review of the Capital Markets Union Action Plan (Mid-Term Review of the Capital Markets Union Action Plan - COM(2017) 292 final).

To develop the overall vision of sustainable finance that this requires, the Commission decided last year to appoint a High-Level Expert Group (HLEG) on sustainable finance under the chairmanship of Christian Thimann. This group is supporting the Commission to develop an overarching and comprehensive EU strategy on sustainable finance.

On 13 July 2017, the HLEG published its interim report which provided a comprehensive vision on sustainable finance. It identified two imperatives for Europe's financial system. "The first is to strengthen financial stability and asset pricing, by improving the assessment and management of long term risks and intangible factors of value creation. The second is to improve the contribution of the financial sector to sustainable and inclusive growth by financing long-term needs and accelerating the shift to a sustainable economy".

In its interim report (EU High-Level Expert Group on Sustainable Finance, 'Financing a sustainable European economy' Interim report, July 2017), the HLEG proposed eight early recommendations for policy action on sustainable finance. The third recommendation focused on establishing a "fiduciary duty" that encompasses sustainability. The HLEG suggested clarifying that the duties of institutional investors and asset managers explicitly integrate material environmental, social and governance (ESG) factors and long term sustainability.

Given the maturity and the interest of the HLEG recommendation, the Commission has decided to start work on an impact assessment to assess whether and how a clarification of the duties of institutional investors and asset managers in terms of sustainability could contribute to a more efficient allocation of capital, and to sustainable and inclusive growth.

The duties of care, loyalty and prudence are embedded in the EU's financial framework governing obligations that institutional investors and asset managers owe to their end-investors/scheme members. These duties are the foundation of investment process.

The implementation of these duties implies fulfillment of various obligations for asset managers and institutional investors that include, for instance, the duty to act in the best interest of beneficiaries /investors, with due care, skill and diligence in performing their activities, including the identification and management of conflict of interests. They are also required to act honestly, and ensure adequate and proportionate performance of their activities.

Although these duties are embedded in the EU financial legal framework, it appears unclear that they require institutional investors and asset managers to assess the materiality of sustainability risks (i.e risks relating to environmental, social and governance issues). Market practices indicate that institutional investors and asset managers generally understand these duties as requiring a focus on maximising short-term financial returns and disregard long-term effects on performance due to sustainability factors and risks. This can lead to misallocation of capital and might give rise to concerns about financial stability since markets can be vulnerable to abrupt corrections, such as those associated with the delayed transition to low carbon economies.

This consultation will help the Commission gather and analyse the necessary evidence to determine possible action to improve the assessment and integration of sustainability factors in the relevant investment entities' decision-making process.

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-investors-duties-sustainability@ec.europa.eu.

More information:

- on this consultation
- on the protection of personal data regime for this consultation

Glossary

Relevant investment entities: entities managing assets entrusted to them

Sustainability factors: for the purpose of this consultation, sustainability factors refer to environmental, social and governance issues as defined by the United Nations Environment Programme (UNEP) (*UNEP Inquiry, Definitions and Concepts: Background Note, 2016*). The exact scope of sustainability factors to be addressed is also the object of this consultation.

Environmental issues relate to the quality and functioning of the natural environment and natural systems including biodiversity loss; greenhouse gas emissions, renewable energy, energy efficiency, natural resource depletion or pollution; waste management; ozone depletion; changes in land use; ocean acidification and changes to the nitrogen and phosphorus cycles

Social issues relate to rights, well-being and interests of people and communities including human rights, labour standards, health and safety, relations with local communities, activities in conflict zones, health and access to medicine, consumer protection; and controversial weapons.

Governance issues relate to the management of investee entities. Issues include board structure, size, diversity, skills and independence; executive pay; shareholder rights; stakeholder interaction; disclosure of information; business ethics; bribery and corruption; internal controls and risk management; and, in general, issues dealing with the relationship between a company's management, its board, its shareholders and its other stakeholders.

1. Information about you

*Are you replying as:
- a private individual
- (selected) an organisation or a company
- a public authority or an international organisation

*Name of your organisation:

ecoDa - European Confederation of Directors' Associations

Contact email address:

The information you provide here is for administrative purposes only and will not be published

contact@ecoda.org

*Is your organisation included in the Transparency Register?
(If your organisation is not registered, we invite you to register here, although it is not compulsory to be registered to reply to this consultation. Why a transparency register?)
- (selected) Yes
- No

*If so, please indicate your Register ID number:

37854527418-86

*Type of organisation:
- Academic institution
- Company, SME, micro-enterprise, sole trader
- Institutional investor
- Consultancy, law firm
- Consumer association
- Industry association
- Media
- Non-governmental organisation
- Think tank
- Trade union
- (selected) Other

*Please specify the type of organisation:

Organisation representing national institutes of directors

* Where are you based and/or where do you carry out your activity?

Belgium

* Field of activity or sector (*if applicable*):

at least 1 choice(s)

- [ ] Accounting
- [ ] Auditing
- [ ] Banking
- [ ] Credit rating agencies
- [ ] Insurance
- [ ] Occupational pension provision
- [ ] Personal pension provision
- [ ] Collective Investment Management
- [ ] Individual portfolio management
- [ ] Financial advice
- [ ] Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)
- [ ] Service provider (e.g. index provider, research providers)
- [x] Other
- [ ] Not applicable

* Please specify your activity field(s) or sector(s):

Corporate Governance

Important notice on the publication of responses

* Contributions received are intended for publication on the Commission's website. Do you agree to your contribution being published?
(see specific privacy statement)

- (●) Yes, I agree to my response being published under the name I indicate (*name of your organisation /company/public authority or your name if your reply as an individual*)
- ( ) No, I do not want my response to be published

2. Your opinion

2.1 Questions addressed to all respondents:

I. General overview

1) Do you think relevant investment entities should consider sustainability factors in their investment decision-making?

- (x) Yes
- ( ) No
- ( ) No opinion

Please explain the reasons:

If asset owners feel that it is their legal duty to simply maximise short-term performance against a benchmark, then this short-term demand will be transmitted to fund managers and subsequently companies. However, if the fiduciary duty of investors is also about promoting long-term performance, this could also have implications (via the investment chain) for the temporal pressures facing companies. Listed companies need to rely on long-term stable shareholders. The financial sector should be first and foremost at the service of the real economy. This supposes shifting gear from a focus on intra-financial business and trading-oriented strategies, back to the core of financing the real economy. This shift can be stimulated through better consideration of sustainability factors in their investment decision-making.

2) What are the sustainability factors that the relevant investment entities should consider? (Please make a choice and indicate the importance of the different factors (1 is not important and 5 is very important). (Please refer to the definition in the Glossary).

	Yes	No	No opinion
Climate factors (these include climate mitigation factors as well as climate resilience factors)	(x)	( )	( )
Other environmental factors	(x)	( )	( )
Social factors	(x)	( )	( )
Governance factors	(x)	( )	( )
Others	(x)	( )	( )

Please specify others:

The relative importance of ESG factors, especially the environmental factors will depend to a large extent on the scale and scope of the company and above all of the sector of its activities. Moreover the governance factors will be quite different according to the type of shareholders and their time horizon. Whereas the EU hopes to promote sustainability in the business world by more focusing on the shareholder duties, it should be clear that their time horizon might be quite different from one category of shareholders to another. Therefore, ecoDa is and has been pleading already for a very long time, to consider this difference when developing specific governance directives and recommendations, certainly when the aim is to promote long term sustainability. Any new EU guidelines for investors on how to assess corporate governance as well as social and environmental factors should take this diversity into consideration unless we fear that these guidelines will end up in a mere window dressing or box-ticking exercise.

Importance for climate factors:

- ( ) 1
- ( ) 2

- ( ) 3
- ( ) 4
- (x) 5

Importance for other environmental factors:

- ( ) 1
- ( ) 2
- ( ) 3
- ( ) 4
- (x) 5

Importance for social factors:

- ( ) 1
- ( ) 2
- ( ) 3
- ( ) 4
- (x) 5

Importance for governance factors:

- ( ) 1
- ( ) 2
- ( ) 3
- ( ) 4
- (x) 5

Importance for others:

- ( ) 1
- ( ) 2
- ( ) 3
- ( ) 4
- ( ) 5

Please specify, which specific factors within the above categories you are considering, if any:

3) Based on which criteria should the relevant investment entities consider sustainability factors in their investment decision making?

Please explain:

It is important to develop a metrics to promote sustainable finance characterized by: simplicity, comparability across sectors, relevance to the investment area, and aggregation at the company level.

4) Which of the following entities should consider sustainability factors in their investment decision-making? (Possibility to select several answers). If so, please indicate the level of impact that this would have (1 is the smallest impact and 5 is the highest impact).

	Yes	No	No opinion
Occupational pension providers	◉	◯	◯
Personal pension providers	◉	◯	◯
Life insurance providers	◯	◯	◯
Non-life insurance providers	◯	◯	◯
Collective investment funds (UCITS, AIF, EuVECA, EuSEF, ELTIF)	◯	◯	◯
Individual portfolio managers	◯	◯	◯

Please explain:

ecoDa believes that ESG factors do play an important role, not only in societal terms but for the business firms directly they may not only pose important potential risks if neglected, while also offering strategic opportunities when optimally exploited. So sufficient attention for ESG factors is a component to secure long term business success.This implies that the interests of investors that also have such long-term horizon (like family shareholders or pension funds) are very much aligned with the promotion of ESG factors. For more short-term oriented investors, the benefits or returns of promoting ESG and heavily investing in it, may not materialize sufficiently quickly.

Level of impact for occupational pension providers:

- ◯ 1
- ◯ 2
- ◯ 3
- ◯ 4
- ◯ 5

Level of impact for personal pension providers:

- ◯ 1
- ◯ 2
- ◯ 3
- ◯ 4
- ◯ 5

II. Problem

5) To your knowledge, what share of investment entities active in the EEA (European Economic Area) currently consider sustainability factors in their investment decisions?

	All or almost all	More than two thirds	More than half	More than a third	None or almost none	No opinion
Occupational pension providers						
Personal pension providers						
Life insurance providers						
Non-life insurance providers						
Collective investment funds (UCITS, AIF, EuVECA, EuSEF, ELTIF)						
Individual portfolio managers						

6) To your knowledge, which is the level of integration of sustainability factors by the different investment entities (active in the EEA)?

	High integration	Medium integration	Low integration	No integration	No opinion
Occupational pension providers					
Personal pension providers					
Life insurance providers					
Non-life insurance providers					
Collective investment funds (UCITS, AIF, EuVECA, EuSEF, ELTIF)					
Individual portfolio managers					

7) Which constraints prevent relevant investment entities from integrating sustainability factors or facilitate their disregard. Please provide the importance of the different constraints that you consider relevant (1 is not important and 5 is very important).

	1	2	3	4	5	No opinion
Lack of expertise and experience					●	
Lack of data/research						
Lack of impact on asset performance						

Inadequate methodologies for the calculation of sustainability risks						
Inadequate sustainable impact metrics					X	
Excessive costs for the scale of your company						
No interest from financial intermediaries					X	
No interest from beneficiaries/clients						
European regulatory barriers						
National regulatory barriers						
Lack of fiscal incentives					X	
Lack of eligible entities						
Others						

Please provide more details on what the constraints/reasons are and how they limit the integration of sustainability factors:

The issue of short termism does not pose the same challenges throughout Europe. Countries with a wide dispersed shareholding base and very active stock markets (like the US and the UK) are apparently more vulnerable to short-term thinking than the continental European countries, which rely to a much larger extent on stable blockholders. This proves (again) that a ‘one size fits all’ approach is neither feasible nor relevant. Therefore, it is important that any remedy action is done in a proportionate way and not imposed to all countries in the same way. In classical models, block-holders exert governance through direct intervention in a firm’s operations, otherwise known as “voice”. More recent models show that block-holders can govern through an alternative mechanism known as “exit” (“vote with their feet”).

8) How challenging is it for relevant investment entities to integrate the different sustainability factors? (1 is not challenging and 5 is very challenging) - Please refer to the definition in the Glossary).

	1	2	3	4	5	No opinion
Climate factors (*these include climate mitigation factors as well as climate resilience factors*)			X			
Other Environment factors			X			
Social factors			X			
Governance factors					X	
Others						

Please explain:

In Europe listed companies are already required to publish a lot of non financial information on most of the ESG factors; so for the investment world the available information will drastically improve in the coming years. However the question remains to what extent the true measures of ESG can be effectively disclosed and measured. ecoDa is of the opinion that measuring the quality of governance is much more difficult from the outside. Therefore, ecoDa is convinced that boards should play an important complimentary role in evaluating the quality and respect of governance practices and recommendations as well as the respect of ESG-factors. On top of that, promoting the respect for ESG factors might be more effective when embedded also in performance related executive remuneration than the mere shareholder activism.

III. Policy options

9) In which area should relevant investment entities consider sustainability factors within their investment decision-making? Please make a choice and indicate the relevance of the different areas (1 is minor relevance and 5 is very high relevance).

	Yes	No	No opinion
Governance	◉	○	○
Investment strategy	◉	○	○
Asset allocation	◉	○	○
Risk management	◉	○	○
Others	○	○	○

Relevance for governance:

- ○ 1
- ○ 2
- ○ 3
- ○ 4
- ◉ 5

Relevance for investment strategy:

- ○ 1
- ○ 2
- ○ 3
- ○ 4
- ◉ 5

Relevance for asset allocation:

- ○ 1
- ○ 2
- ○ 3
- ○ 4
- ◉ 5

Relevance for risk management:

- ( ) 1
- ( ) 2
- ( ) 3
- ( ) 4
- (x) 5

10) Within the area of governance, which arrangements would be most appropriate to enable the integration of sustainability factors? (1 is the not appropriate and 5 is the very appropriate).

	1	2	3	4	5	No opinion
Specific sustainability investment Committee	(x)	( )	( )	( )	( )	( )
Specific sustainability member of the Board	(x)	( )	( )	( )	( )	( )
Sustainability performance as part of remuneration criteria	( )	( )	( )	( )	(x)	( )
Integration of sustainability factors in the investment decision process	( )	( )	( )	( )	(x)	( )
Integration of sustainability checks in the control process	( )	( )	( )	( )	( )	( )
Periodic reporting to senior management/board	( )	( )	( )	( )	(x)	( )
Others	(x)	( )	( )	( )	( )	( )

Please specify others:

All board members should be sensitive towards sustainability issues. On top of that the different board committees should each in their domain pay sufficient attention to stimulating the respect for ESG factors. ecoDa would not plead for an additional board committee, but integrate the attention much more in the existing committees, like audit committee (on ESG risk management), like strategic committee (on valorizing ESG opportunities), remuneration committee (on performance related pay criteria), and on the board (investor relations);

11) Should insurance and pension providers consult their beneficiaries on an annual/periodic basis on their preference as regards sustainability factors?

- ( ) Yes
- (x) No
- ( ) No opinion

Please explain:

ecoDa considers the obligation to consult beneficiaries as a solution that might cost much more administration and create less reward than a transparency or disclosure requirement on their specific ESG policy and how they comply with it.

12) Within the portfolio's asset allocation, should relevant investment entities consider sustainability factors even if the consideration of these factors would lead to lower returns to beneficiaries/clients in the medium/short term?

- ○ Yes
- ○ No
- ○ No opinion

13) Within the area of risk management, does the current set of corporate disclosures provide the relevant investment entities with adequate information to perform sustainability risk assessments in respect of investee companies?

- ○ Yes
- ● No
- ○ No opinion

Please explain where the possible gaps are, if any:

ecoDa wants to further promote the use of enterprise risk management information, to integrate the potential downside of short-term optimisation initiatives.

14) Do the overall information or risk metrics available enable the relevant investment entities to adequately perform sustainability risk assessments?

- ○ Yes
- ○ No
- ○ No opinion

15) Do you think that uniform criteria to perform sustainability risk assessments should be developed at EU level?

- ○ Yes
- ○ No
- ○ No opinion

16) In case material exposure to sustainability factors is identified, what are the most appropriate actions to be performed by the relevant investment entity?

17) Should relevant investment entities disclose how they consider sustainability factors within their investment decision-making?

- ● Yes
- ○ No

○ No opinion

Please explain:

If yes, what areas should the disclosure cover? Please make a choice and indicate the relevance of disclosure within the different areas (1 is minor relevance and 5 is high relevance):

	Yes	No	No opinion
Governance	◉	○	○
Investment strategy	◉	○	○
Asset allocation	◉	○	○
Risk management	◉	○	○
Other	○	○	○

Relevance for governance:

○ 1
○ 2
○ 3
○ 4
◉ 5

Relevance for investment strategy:

○ 1
○ 2
○ 3
○ 4
○ 5

Relevance for asset allocation:

○ 1
○ 2
○ 3
○ 4
○ 5

Relevance for risk management:

- 1
- 2
- 3
- 4
- 5

If yes, where?

	Yes	No	No opinion
Pre-contractual disclosure (e.g. prospectuses)			
Semi-annual/annual reports			
Periodic reports	(selected)		
Website	(selected)		
Newsletters			
Factsheets			
Marketing materials			
Others			

IV. Impacts for stakeholders

18) Which stakeholder groups would incur costs and which would benefit from integrating sustainability factors within investment decision-making by relevant investment entities?

	Benefits	Costs
Occupational pension providers		
Personal pension providers		
Life insurance providers		
Non-life insurance providers		
Collective investment funds (UCITS, AIF, EuVECA, EuSEF, ELTIF)		
Individual portfolio managers		
General public		
Retail investors		
Financial advisors		
Service providers (index provider, research providers…)		

Other stakeholders (please specify)	☐	☑

Please explain:

If one believes that respecting ESG has a positive impact on the long term value creation, the effect on the business will be positive over the longer term; however it might imply sometimes very important investments, where the costs has to be incurred quite some time before benefits start to materialize.

2.2 Questions addressed to end-investors

1) Do you take into account sustainability factors when you choose your investment products or investment entity?

- Yes
- No

3. Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here:

Useful links

More on the Transparency register (http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

Consultation details (https://ec.europa.eu/info/consultations/finance-2017-investors-duties-sustainability_en)

Specific privacy statement (https://ec.europa.eu/info/files/specific-privacy-statement-institutional-investors-and-asset-managers-duties-regarding-sustainability_en)

Contact

fisma-investors-duties-sustainability@ec.europa.eu