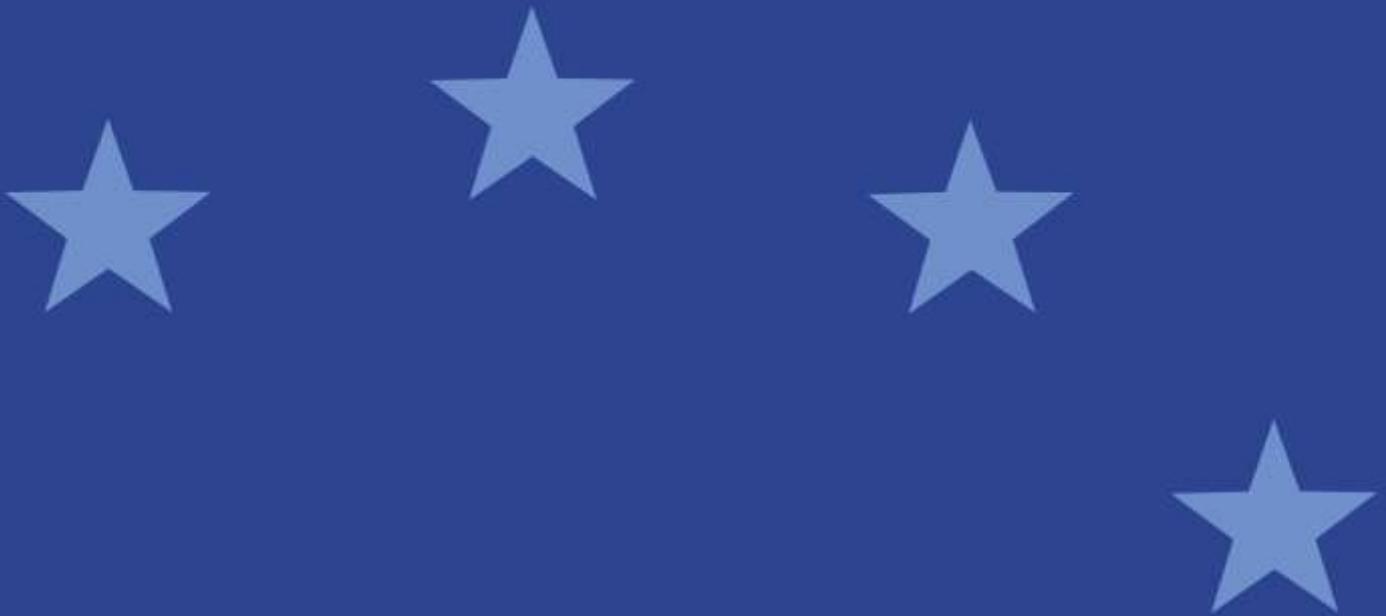


# Consultation Paper

**On integrating sustainability risks and factors in the UCITS Directive and AIFMD**



## Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in the Annex. Comments are most helpful if they:

1. respond to the question stated;
2. indicate the specific question to which the comment relates;
3. contain a clear rationale; and
4. describe any alternatives ESMA should consider.

ESMA will consider all comments received by **19 February 2019**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading 'Your input - Consultations'.

### Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

### Data protection

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](#).

### Who should read this paper

This document will be of interest to UCITS management companies, self-managed UCITS investment companies, AIFMs and their trade associations, as well as institutional and retail investors investing in UCITS.

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# 1 Overview

## Reasons for publication

1. On 24 July 2018, the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA) received a formal request (mandate) from the European Commission to provide technical advice to supplement the initial package of proposals and to assist the Commission on potential amendments to, or introduction of, delegated acts under Directive 2009/65/EC (UCITS Directive), Directive 2009/138/EC (Solvency II Directive), Directive 2011/61/EU (AIFMD), Directive 2014/65/EU (MiFID II) and Directive 2016/97/EU (IDD) with regard to the integration of sustainability risks and sustainability factors.
2. The Commission requested ESMA and EIOPA to provide technical advice by no later than 30 April 2019.
3. During the preparation of this Consultation Paper on the draft technical advice, ESMA and EIOPA have closely liaised to ensure consistency across sectors.

## Background

4. Sustainability has long been at the heart of the European project. Following the adoption of the 2016 Paris agreement on climate change and the United Nations 2030 Agenda for Sustainable Development, the Commission has expressed in the Action Plan: Financing Sustainable Growth its intention to clarify so-called fiduciary duties and increase transparency in the field of sustainability risks and sustainable investment opportunities with the aim to:
  - reorient capital flows towards sustainable investment in order to achieve sustainable and inclusive growth;
  - assess and manage relevant financial risks stemming from climate change, resource depletion, environmental degradation and social issues; and
  - foster transparency and long-termism in financial and economic activity.
5. On 24 May 2018, the European Commission (Commission) adopted a package of measures on sustainable finance. The package included proposals aimed at establishing a unified EU classification system of sustainable economic activities ('taxonomy'); improving disclosure requirements on how institutional investors integrate environmental, social and governance (ESG) factors in their risk processes; creating a new category of benchmarks which will help investors compare the carbon footprint of their investments.
6. In addition, the Commission has been seeking feedback on amendments to the Commission Delegated Regulation 2017/565 (MiFID II Delegated Regulation) and Commission Delegated Regulation 2017/2359 (IDD Delegated Regulation) to include ESG considerations into the advice that investment firms and insurance distributors offer to

individual clients. Following the public consultations, the Commission intends to adopt the amendments.

7. Following the publication of the Commission Action Plan on Green and Sustainable Finance in early March 2018, ESMA's Securities and Markets Stakeholder Group (SMSG) decided to provide advice to ESMA on the topic. The advice was approved and published on 20 September 2018.<sup>1</sup>
8. The SMSG advice focused on the amendments to delegated acts under MiFID II and provided, inter alia, the following recommendation:
  - The SMSG supports the accelerated development of the market to high and consistent standards. The key challenge with the Action Plan and the proposed Regulations package will be to find the right balance in implementation, and not create regulatory complexity or legal uncertainty, as the ultimate goal is to encourage innovation, increase investment and finance for sustainable projects.
  - In particular, it addresses key qualitative challenge i.e. the risk of green washing which may undermine the reputation of green markets and impede progress.
  - At the same time, there is a duty of care to avoid being inflexible or overly prescriptive on such a forward-looking topic, as the market has not yet reached maturity and therefore to avoid the risk to put Europe at a global competitive disadvantage. We believe that certain proposals may need adjustment to avoid creating such unintended barriers to market development. Rather a principles-based framework should be favoured.
  - The critical prerequisite for an orderly development is a clear and harmonised taxonomy of green assets, project categories and sectors. The Group therefore welcome the Commission Proposal (24.05.2018) on Taxonomy to be finalised with the help of an Expert Group by the end of 2022.
  - The global nature and inter-connectedness of sustainability markets calls for international co-operation to avoid regulatory fragmentation, curb incentives for regulatory arbitrage, and spread best practice. Globally consistent taxonomies and standards should be thus sought to achieve such above objectives, in particular with the global bodies.
9. This Consultation Paper aims at fulfilling the Commission's request for technical advice on potential amendments to delegated acts under Directive 2009/65/EC (UCITS Directive) and Directive 2011/61/EU (AIFMD) with regard to the integration of sustainability risks and factors in the internal processes and procedures of UCITS management companies and alternative investment fund managers (AIFMs).

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<sup>1</sup> [Securities and Markets Stakeholder Group Advice to ESMA on Sustainable Finance, 20 September 2018, 20 September 2018.](#)

## Approach to the Commission's request

10. Both the UCITS Directive and AIFMD as well as the relevant delegated acts on organisational requirements, operating conditions and risk management follow a principles-based approach when setting out requirements for authorised UCITS management companies, self-managed investment companies and authorised AIFMs (hereinafter jointly referred to as 'authorised entities').
11. In its mandate to ESMA, the Commission clarified that its objective is to explicitly require the integration of sustainability risks in the investment decision processes.
12. ESMA is of the view that the integration of sustainability risks within the UCITS and AIFMD frameworks is better done through a high-level principles-based approach, similar to that already followed for a number of other relevant risks (e.g. interest rate or credit risk). Detailed prescriptions at this stage could enhance the risks of regulatory arbitrage by authorised entities and create regulatory errors, especially considering that there are still several ongoing legislative procedures as referred to above.
13. With the proposals set out in this Consultation Paper, ESMA aims at clarifying that all authorised fund managers subject to the UCITS and AIFMD regimes need to incorporate sustainability risks in their due diligence processes and assess and manage the sustainability risks stemming from their investments along with all other relevant risks such as market, interest or credit risk. To this end, sustainability risks need to be captured by the due diligence process and risk management systems in a way and to the extent that is appropriate to the size, nature, scope and complexity of their activities and the relevant investment strategies pursued.
14. Consequently, ESMA is proposing changes in the following areas of the UCITS and AIFMD framework:
  - *General organisational requirements*: incorporation of sustainability risks within organisational procedures, systems and controls to ensure that they are properly taken into account in the investment and risk management processes.
  - *Resources*: consideration of the required resources and expertise for the integration of sustainability risks.
  - *Senior Management responsibilities*: clarification that the integration of sustainability risks is part of the responsibilities of Senior Management.
  - *Conflicts of interest*: consideration of the types of conflicts of interest arising in relation to the integration of sustainability risks and factors.
  - *Due diligence requirements*: consideration of sustainability risks when selecting and monitoring investments, designing written policies and procedures on due diligence and implementing effective arrangements.

- *Risk management*: explicit inclusion of sustainability risks when establishing, implementing and maintaining an adequate and documented risk management policy.
15. In the preparation of this Consultation Paper, ESMA faced challenges with regard to the terminology and concepts to be used given the ongoing Level 1 legislative procedures referred to above and the fact that the existing UCITS and AIFMD frameworks do not include a legal definition of “sustainability risks”.
16. In this context, the impact assessment of the Commission legislative proposals of 24th May operationalises the concept of sustainability finance by referring to the environmental, social and governance factors as follows:
- Sustainable finance generally refers to the process of taking due account of environmental social and governance considerations in investment decision-making. This would require that sustainability risks are always taken into consideration when making investment decisions, and not only when sustainable impact investments are selected based on very explicit sustainability preferences of investors. Investors can invest sustainably either by integrating ESG factors/risks in investment decision making, or by investing directly into economic activities that positively contribute to sustainability. In this impact assessment, the concept of sustainability is operationalised by referring to so-called ESG factors. Although there is no definitive list of which issues or factors are covered by the terms "ESG", they are, according to UNEP Inquiry and the PRI, broadly defined as follows: (i) Environmental (E) issues relate to the quality and functioning of the natural environment and natural systems; (ii) Social (S) issues relate to the rights, well-being and interests of people and communities; and (iii) Governance (G) issues relate to the governance of companies and other investee entities.<sup>2</sup>*
17. In light of the above and for the purposes of the delegated acts pursuant to the UCITS Directive and AIFMD, ‘sustainability risk’ could therefore be understood as the risk of fluctuation in the value of positions in the fund’s portfolio due to ESG factors.
18. ESMA sees merit in including further reflections on this question in the final technical advice and invites stakeholders to express their views in this regard.

**Question to stakeholders**

**Q1: How do you understand or how would you define the notion of “sustainability risks” for the purposes of the delegated acts adopted under the UCITS Directive and AIFMD?**

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<sup>2</sup> [Commission Staff Working Document, Impact Assessment \(SWD\(2018\) 264 final\), 24.5.2018, page 11.](#)

### Cost-benefit analysis

19. A preliminary cost-benefit analysis of the proposals is included in Annex I of this Consultation Paper.

### Next steps

20. ESMA will consider the responses it receives to this Consultation Paper, and will finalise the draft technical advice for submission to the Commission by end of April 2019.

## 2 Organisational requirements

### Background/Mandate

#### Extract from the Commission's request for advice (mandate)

*“Organisational requirements in delegated acts adopted under Articles 12(3) and 14(2) of the UCITS Directive (i.e. Commission Directive 2010/43/EU), [...] Articles 12(3) and 18(2) of AIFMD (i.e. Commission Delegated Regulation (EU) 231/2013, [...] do not currently explicitly require the integration of sustainability risks. Where necessary for the achievement of consistency across sectors, EIOPA and ESMA are invited to also consider Article 135(1)(a) of the Solvency II Directive for potential new level 2 measures.*

*EIOPA and ESMA are invited to provide technical advices on corporate governance mechanisms within the organisation of the financial market participants and investment and insurance advisors, including, where relevant, but not limited to:*

- tasks and the role of the risk-management function or procedures for risk assessment, the compliance function, the internal control function or system, the internal audit function and/or the actuarial function in the system of governance and tasks or responsibilities of bodies that undertake the management and supervisory functions in the corporate governance in relation to sustainability risk limits and overseeing their implementation;*
- steps of procedures and processes to ensure the effectiveness and adequacy of sustainability risk integration;*
- skill, expertise and knowledge required for the assessment of sustainability risks;*
- regular reviews of the mechanisms put in place to integrate sustainability risks and regular internal reporting;*
- adequate support to (e.g. analysis, research and legal advice), and resources across, all relevant functions and where several functions are involved in the integration of sustainability risks, the requirements on cooperation with each other; and*

*- measures and policies specifically considering types of conflict of interest that might arise in relation to sustainability considerations and the steps to identify, prevent, manage and disclose them.*

*Adapting processes, systems and internal controls to reflect sustainability risks is relevant in order to build the technical capacity and knowledge to analyse sustainability risks and ensure that the investment and advisory process is properly implemented and adhered to over time.”*

**The relevant organisational requirements in delegated acts adopted under the aforementioned Articles of the UCITS Directive are included in:**

- Article 4 of the Commission Directive 2010/43/EU on “General Requirements on Procedures and Organisation”
- Article 5 of the Commission Directive 2010/43/EU on “Resources”
- Article 9 of the Commission Directive 2010/43/EU on “Control by Senior Management and Supervisory Function”

**The relevant organisational requirements in delegated acts adopted under the aforementioned Articles of the AIFMD are included in:**

- Article 22 of the Commission Delegated Regulation (EU) 231/2013 on “Resources”
- Article 57 of the Commission Delegated Regulation (EU) 231/2013 on “General Requirements”
- Article 60 of the Commission Delegated Regulation (EU) 231/2013 on “Control by the Governing Body, Senior Management and Supervisory Function”

## **Analysis**

21. In line with the policy preference for a principles-based approach described above, ESMA seeks to amend certain key Level 2 provisions on organisational requirements as proposed below. This approach would seek to ensure that authorised entities are explicitly required to incorporate sustainability risks and factors within their internal organisational procedures, systems and controls in a way and to the extent that is appropriate to the size, nature, scope and complexity of their activities and the relevant investment strategies pursued.
22. Authorised entities should in particular carefully consider whether they have sufficient human and technical resources for the assessment of sustainability risks within their organisation and governance structure. It is important that authorised entities employ individual(s) that possess the relevant skills, knowledge and expertise in sustainability risks.

23. In order to ensure appropriate consideration of environmental, social and governance risks and factors, internal control mechanisms should be instituted by senior management and systematic processes should be put in place. Thereby ensuring continued consideration of sustainability risks and factors throughout the decision-making process.
24. Moreover, ESMA would like to emphasize that, through the inclusion of a reference to sustainability risks and factors in Article 4 of the Commission Directive 2010/43/EU and Article 57 in the Commission Delegated Regulation (EU) 231/2013, it would also be expected that both the Compliance function and Internal Audit incorporate in their control programs issues related to the integration of sustainability risks and factors, as both functions are responsible for the monitoring of internal policies and procedures and their compliance with regulatory requirements.

## Proposals

### Draft technical advice to the European Commission

#### **COMMISSION DIRECTIVE 2010/43/EU**

*Article 4 of the Commission Directive 2010/43/EU on "General Requirements on Procedures and Organisation" to be amended<sup>3</sup> as follows:*

#### Article 4

#### General requirements on procedures and organisation

1. Member States shall require management companies to comply with the following requirements:
  - (a) to establish, implement and maintain decision-making procedures and an organisational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;
  - (b) to ensure that their relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities;
  - (c) to establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the management company;
  - (d) to establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the management company as well as effective information flows with any third party involved;
  - (e) to maintain adequate and orderly records of their business and internal organisation.

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<sup>3</sup> All proposed amendments are included as underlined text.

Member States shall ensure that management companies take into account the nature, scale and complexity of the business of the management company, and the nature and range of services and activities undertaken in the course of that business. Member States shall ensure that management companies take into account sustainability risks and factors when complying with the requirements laid down in the first subparagraph.

2. [...]

*Article 5 of the Commission Directive 2010/43/EU on “Resources” to be amended as follows:*

#### Article 5

#### Resources

1. Member States shall require management companies to employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.
2. Member States shall ensure that management companies retain the necessary resources and expertise so as to effectively monitor the activities carried out by third parties on the basis of an arrangement with the management company, especially with regard to the management of the risk associated with those arrangements.
3. Member States shall require management companies to ensure that the performance of multiple functions by relevant persons does not and is not likely to prevent those relevant persons from discharging any particular function soundly, honestly, and professionally.
4. Member States shall ensure that for the purposes laid down in paragraphs 1, 2 and 3, management companies take into account the nature, scale and complexity of the business of the management company, and the nature and range of services and activities undertaken in the course of that business.
5. Member States shall ensure that for the purposes laid down in paragraphs 1, 2 and 3, management companies take into account the necessary resources and expertise for the effective integration of sustainability risks and factors.

*Article 9 of the Commission Directive 2010/43/EU on “Control by Senior Management and Supervisory Function” to be amended as follows:*

#### Article 9

#### Control by senior management and supervisory function

1. Member States shall require management companies, when allocating functions internally, to ensure that senior management and, where appropriate, the supervisory function, are

responsible for the management company's compliance with its obligations under Directive 2009/65/EC.

2. The management company shall ensure that its senior management:

(a) is responsible for the implementation of the general investment policy for each managed UCITS, as defined, where relevant, in the prospectus, the fund rules or the instruments of incorporation of the investment company;

(b) oversees the approval of investment strategies for each managed UCITS;

(c) is responsible for ensuring that the management company has a permanent and effective compliance function, as referred to in Article 10, even if this function is performed by a third party;

(d) ensures and verifies on a periodic basis that the general investment policy, the investment strategies and the risk limits of each managed UCITS are properly and effectively implemented and complied with, even if the risk management function is performed by third parties;

(e) approves and reviews on a periodic basis the adequacy of the internal procedures for undertaking investment decisions for each managed UCITS, so as to ensure that such decisions are consistent with the approved investment strategies;

(f) approves and reviews on a periodic basis the risk management policy and arrangements, processes and techniques for implementing that policy, as referred to in Article 38, including the risk limit system for each managed UCITS.

(g) is responsible for the integration of sustainability risks and factors.

3. [...]

### **COMMISSION DELEGATED REGULATION (EU) 231/2013**

*Article 22 of the Commission Delegated Regulation (EU) 231/2013 on "Resources" to be amended as follows:*

Article 22

Resources

1. AIFMs shall employ sufficient personnel with the skills, knowledge and expertise necessary for discharging the responsibilities allocated to them.

2. For the purposes of paragraph 1, AIFMs shall take into account the nature, scale and complexity of their business and the nature and range of services and activities undertaken in the course of that business.

3. For the purposes of paragraph 1, AIFMs should take into account the necessary resources and expertise for the effective integration of sustainability risks and factors.

*Article 57 of the Commission Delegated Regulation (EU) 231/2013 on “General Requirements” to be amended as follows:*

Article 57

General requirements

1. AIFMs shall:

- (a) establish, implement and maintain decision-making procedures and an organisational structure which specifies reporting lines and allocates functions and responsibilities clearly and in a documented manner;
- (b) ensure that their relevant persons are aware of the procedures to be followed for the proper discharge of their responsibilities;
- (c) establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the AIFM;
- (d) establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the AIFM and effective information flows with any third party involved;
- (e) maintain adequate and orderly records of their business and internal organisation.

AIFMs shall take into account the nature, scale and complexity of their business and the nature and range of services and activities undertaken in the course of that business. AIFMs shall take into account sustainability risks and factors when complying with the requirements laid down in the first subparagraph.

2 [...]

*Article 60 of the Commission Delegated Regulation (EU) 231/2013 on “Control by the governing body, senior management and supervisory function” to be amended as follows:*

Article 60

Control by the governing body, senior management and supervisory function

1. When allocating functions internally, AIFMs shall ensure that the governing body, the senior management and, where it exists, the supervisory function are responsible for the AIFM's compliance with its obligations under Directive 2011/61/EU.

2. An AIFM shall ensure that its senior management:

(a) is responsible for the implementation of the general investment policy for each managed AIF, as defined, where relevant, in the fund rules, the instruments of incorporation, the prospectus or the offering documents;

(b) oversees the approval of the investment strategies for each managed AIF;

(c) is responsible for ensuring that valuation policies and procedures in accordance with Article 19 of Directive 2011/61/EU are established and implemented;

(d) is responsible for ensuring that the AIFM has a permanent and effective compliance function, even if this function is performed by a third party;

(e) ensures and verifies on a periodic basis that the general investment policy, the investment strategies and the risk limits of each managed AIF are properly and effectively implemented and complied with, even if the risk management function is performed by third parties;

(f) approves and reviews on a periodic basis the adequacy of the internal procedures for undertaking investment decisions for each managed AIF, so as to ensure that such decisions are consistent with the approved investment strategies;

(g) approves and reviews on a periodic basis the risk management policy and the arrangements, processes and techniques for implementing that policy, including the risk limit system for each AIF it manages;

(h) is responsible for establishing and applying a remuneration policy in line with Annex II to Directive 2011/61/EU.

(i) is responsible for the integration of sustainability risks and factors.

3. [...]

### **Questions to stakeholders**

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

**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)?

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

### 3 Operating conditions

#### Background/Mandate

##### Extract from the Commission's request for advice (mandate)

*“Operating conditions in delegated acts adopted under Articles 12(3) and 14(2) of the UCITS Directive (i.e. Commission Directive 2010/43/EU), [...] 12(3), 14(4) and 18(2) of AIFMD (i.e. Commission Delegated Regulation (EU) 231/2013) do not establish the details of the integration of sustainability risks within the conduct of business or prudent person rules and due diligence requirements.*

*Financial market participants therefore should (i) define an investment strategy, (ii) where relevant, identify a proper asset allocation which clarifies how clients' money is allocated in accordance with the investment strategy, (iii) undertake proper due diligence in the selection and monitoring of investments, and (iv) ensure that the portfolios remain in line with the investment strategy and, where relevant, the asset allocation, while integrating sustainability risks.*

*The technical advices on the amendments of the respective delegated acts should be consistent with each other, while recognizing, where relevant, the difference in terminology used by ... the UCITS Directive and AIFMD. The technical advices should map the provisions of delegated acts that should be amended.”*

**The relevant operating conditions in delegated acts adopted under the aforementioned Articles of the UCITS Directive are included in:**

- Article 23 of the Commission Directive 2010/43/EU on “Due Diligence Requirements”

**The relevant operating conditions in delegated acts adopted under the aforementioned Articles of the AIFMD relate are included in:**

- Article 18 of the Commission Delegated Regulation (EU) 231/2013 on “Due Diligence”

## Analysis

25. The Commission mandate refers to the integration of sustainability risks into the investment strategy and asset allocation. ESMA is of the view that authorised entities should follow an integrated due diligence and risk management approach. This means that sustainability risks should be considered along with all other relevant risks and that authorised entities should apply their due diligence and risk framework consistently in order to identify, monitor and manage all relevant risks related to their investments including sustainability risks.
26. To this end, the UCITS and AIFMD Level 2 provisions frameworks already include principles-based requirements with regard to due diligence and ensuring that investment decisions are carried out in accordance with the investment strategy and risk limits of the relevant fund. ESMA therefore seeks to clarify that those rules also apply with regard to sustainability risks.
27. Authorised entities should consider sustainability risks associated with their investments and detail their consideration in their investment analysis. Where those risks are considered as material for the financial return of investments, authorised entities should identify the factors that are relevant for each type of risk and the relevant indicator(s) to monitor that factor. For example, when analysing the investment in an industrial company, the social risks could be considered as material for the valuation of investments. One factor materialising this risk could be the security of the employees working on site. One indicator that could be used to monitor that factor is the number of accidents. An increase in the number of accidents should be monitored if it leads to a decrease in the valuation of the investments.
28. In this context, authorised entities should pay particular attention to the information used to perform the above analysis and assess the quality of it. Where sustainability risks have a material impact on the financial return of investments, they should perform the investment analysis based on data adequately reflecting sustainability risks. They should describe how the information is sourced and whether the data is internally processed to perform the investment analysis. Authorised entities should develop specific methodologies to process the data sourced on sustainability risks. They should detail the characteristics of these methodologies and the assumptions used to perform the analysis and explain to which extent the methodology is relevant to the factors analysed.
29. Authorised entities should implement effective arrangements for ensuring the investment decisions on behalf of the UCITS or the AIF are carried out in compliance with the analysis performed above on sustainability risks. They should be able to explain the changes implemented in the portfolio as regards to the integration of sustainability risks.
30. With regard to conflicts of interest, ESMA considers it also useful to add a recital in the Level 2 legislation in order to clarify that when identifying the types of conflicts of interest, authorised entities should include those that stem from the integration of sustainability risks and factors. To this end, authorised entities would be expected to include a clear

reference in their conflict of interests policy on how relevant conflicts are identified and managed.

31. As a general note, ESMA considers that changes proposed in this Consultation Paper should all be applied by authorised entities with the principle of proportionality in mind, taking into account the size, nature, scale and complexity of their activities and relevant investment strategies pursued.

## Proposals

### Draft technical advice to the European Commission

#### **COMMISSION DIRECTIVE 2010/43/EU**

*New recital 17 (bis) to be added to Commission Directive 2010/43/EU as follows:*

When identifying the types of conflicts of interest whose existence may damage the interests of a UCITS, management companies should include those that may arise in relation to the integration of sustainability risks and factors.

*Article 23 of the Commission Directive 2010/43/EU on “Due Diligence Requirements” to be amended as follows:*

#### Article 23

#### Due diligence requirements

1. Member States shall require management companies to ensure a high level of diligence in the selection and ongoing monitoring of investments, in the best interests of UCITS and the integrity of the market.
2. Member States shall require management companies to ensure they have adequate knowledge and understanding of the assets in which the UCITS are invested.
3. Member States shall require management companies to establish written policies and procedures on due diligence and implement effective arrangements for ensuring that investment decisions on behalf of the UCITS are carried out in compliance with the objectives, investment strategy and risk limits of the UCITS.
4. Member States shall require management companies when implementing their risk management policy, and where it is appropriate after taking into account the nature of a foreseen investment, to formulate forecasts and perform analyses concerning the investment's contribution to the UCITS portfolio composition, liquidity and risk and reward profile before carrying out the investment. The analyses must only be carried out on the basis of reliable and up-to-date information, both in quantitative and qualitative terms.

Management companies shall exercise due skill, care and diligence when entering into, managing or terminating any arrangements with third parties in relation to the performance of risk management activities. Before entering into such arrangements, management companies shall take the necessary steps in order to verify that the third party has the ability and capacity to perform the risk management activities reliably, professionally and effectively. The management company shall establish methods for the on-going assessment of the standard of performance of the third party

5. Member States shall require that management companies take into account sustainability risks and factors when complying with the requirements set out in paragraphs 1 to 4.

### COMMISSION DELEGATED REGULATION (EU) 231/2013

*New recital 48 (bis) to be added to Commission Delegated Regulation (EU) 231/2013 as follows:*

When identifying the types of conflicts of interest whose existence may damage the interests of an AIF or its investors, AIFMs should include those that may arise in relation to the integration of sustainability risks and factors.

*Article 18 of the Commission Delegated Regulation (EU) 231/2013 on “Due Diligence” to be amended as follows:*

#### Article 18

#### Due diligence

1. AIFMs shall apply a high standard of diligence in the selection and ongoing monitoring of investments.
2. AIFMs shall ensure that they have adequate knowledge and understanding of the assets in which the AIF is invested.
3. AIFMs shall establish, implement and apply written policies and procedures on due diligence and implement effective arrangements for ensuring that investment decisions on behalf of the AIFs are carried out in compliance with the objectives, the investment strategy and, where applicable, the risk limits of the AIF.
4. The policies and procedures on due diligence referred to in paragraph 3 shall be regularly reviewed and updated.
5. AIFMs shall take into account sustainability risks and factors when complying with the requirements set out in paragraphs 1 to 3.

**Questions to stakeholders**

**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.**

**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?**

**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?**

**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?**

## 4 Risk management

### Background/Mandate

**Extract from the Commission's request for advice (mandate)**

*"In line with the Delegated Acts adopted under Article 51(4) of the UCITS Directive, [...] Articles 15(5) and 19(11) of AIFMD [...] risk management systems or procedures for risk assessment should be in place to monitor risks to which they are exposed. Financial market participants must employ risk-management processes which enable them to measure and manage at any time the risk of the positions and their contribution to the overall risk profile. Risk assessments should consider both financial and relevant sustainability risks. The valuation processes should therefore ensure a proper degree of consideration of relevant/material sustainability risks. The technical advices should describe the elements needed to ensure that financial market participants take into account sustainability risk effectively as well as the tasks to be fulfilled by the relevant functions, such as risk management function, in this respect.*

*The technical advices on the amendments of the respective delegated acts should be consistent with each other, while recognizing, where relevant, the difference in terminology used by [...] the UCITS Directive, AIFMD [...]. The technical advices should map the provisions of delegated acts that should be amended."*

**The relevant risk management requirements in delegated acts adopted under the aforementioned Articles of the UCITS Directive relate in particular to:**

- Article 38 of the Commission Directive 2010/43/EU on “Risk Management Policy”

**The relevant risk management requirements in delegated acts adopted under the aforementioned Articles of the AIFMD relate in particular to:**

- Article 40 of the Commission Delegated Regulation (EU) 231/2013 on “Risk Management Policy”

**Analysis**

32. In line with the principles-based and integrated approach described above, ESMA is of the view that sustainability risks should be considered along other relevant risks such as market, interest or credit risk. Hence the requirements laid down in Chapter VI of the Commission Directive 2010/43/EU and Chapter III Section 3 of the Commission Delegated Regulation (EU) 231/2013 should also apply to the management of sustainability risk. In particular, sustainability risks should be mapped by the risk management function of authorised entities and monitored on an ongoing basis.
33. Sustainability risks are subject to different approaches across the market, notably due to divergence of criteria and methodologies that might be fairly new and subject to further evolution. Furthermore, the availability and quality of the data on sustainability risks and factors poses additional challenges at this stage. Authorised entities should perform a formalised assessment on sustainability risks and their materiality, taking into account several aspects such as the identification of sustainability factors linked to the positions managed, the probability of occurrence and time horizon of sustainability risks with regards to the expected time of holding of the positions bearing the risks, and the quality of the underlying data and methodologies used in order to perform the assessment.
34. Bearing in mind that the methodologies used to monitor sustainability risks are often fairly new and the aforementioned challenges with regard to the availability and quality of data, authorised entities should perform regular reviews of their methodologies and data in order to highlight the potential limits of the risks monitoring and adopt dedicated measures where required.
35. The Commission is currently developing a unified classification system ('taxonomy') on what can be considered an environmentally sustainable economic activity. By identifying activities that, in the Commission's view, qualify as sustainable, businesses and investors will be provided with a common language to identify to what degree economic activities can be considered environmentally-sustainable. ESMA is aware that the finalisation of this taxonomy will be finalised in the upcoming years and that, at least initially, will not cover social and governance issues. While the Commission is developing the taxonomy, authorised entities shall take a broad approach to assessing potential sustainability risks.

Considering the high search costs that are currently attached to sourcing reliable and useful sustainability-related information, the approach shall be proportionate to the relevance and materiality of these risks for the authorised entities, based on the type and complexity of their activities. Considering on-going regulatory efforts on disclosure and transparency in the area of sustainable finance, search costs can be expected to decrease over time, and authorised entities should be able to improve in parallel their internal policies and procedures to manage sustainability risks.

36. ESMA considers that the suggested high-level and principles-based approach in this section meets the objectives set out in the Commission’s request for advice with regard to the integration of sustainability risks in the investment and risk management processes. Introducing more prescriptive rules on the integration of sustainability risks at this stage (while not doing so for various other risks that are relevant for UCITS and AIFs) appears disproportionate and could create the risk of regulatory imbalances. However, this approach does not preclude the possibility for ESMA to provide authorised entities with further guidance in the future if need be (for example, through new Q&As).

## Proposals

### Draft technical advice to the European Commission

#### **COMMISSION DIRECTIVE 2010/43/EU**

*Article 38 of the Commission Directive 2010/43/EU on “Risk Management Policy” to be amended as follows*

#### Article 38

#### Risk management policy

1. Member States shall require management companies to establish, implement and maintain an adequate and documented risk management policy which identifies the risks the UCITS they manage are or might be exposed to.

The risk management policy shall comprise such procedures as are necessary to enable the management company to assess for each UCITS it manages the exposure of that UCITS to market, liquidity, sustainability and counterparty risks, and the exposure of the UCITS to all other risks, including operational risks, which may be material for each UCITS it manages.

[...]

#### **COMMISSION DELEGATED REGULATION (EU) 231/2013**

*Article 40 of the Commission Delegated Regulation (EU) 231/2013 on “Risk Management Policy” to be amended as follows:*

## Article 40

## Risk management policy

1. An AIFM shall establish, implement and maintain an adequate and documented risk management policy which identifies all the relevant risks to which the AIFs it manages are or may be exposed.
2. The risk management policy shall comprise such procedures as are necessary to enable the AIFM to assess for each AIF it manages the exposure of that AIF to market, liquidity, sustainability and counterparty risks, and the exposure of the AIF to all other relevant risks, including operational risks, which may be material for each AIF it manages.

[...]

**Questions to stakeholders**

**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.**

**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.)?**

**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)?**

**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?**

## 5 Annexes

### 5.1 Annex I - Cost-Benefit Analysis

#### *Background*

1. Sustainability has since long been at the heart of the European project. The EU Treaties give recognition to its social and environmental dimensions. The 2016 Commission's Communication on the next steps for a sustainable European future links the Sustainable Development Goals (SDGs) of the UN 2030 Agenda for Sustainable Development to the European policy framework to ensure that all EU actions and policy initiatives, within the EU and globally, take the SDGs on board at the outset. The EU is also fully committed to reaching the EU 2030 climate and energy targets and to mainstream sustainable development into EU policies. As a consequence, many of the Commission's policy priorities for 2014-2020 feed into the EU climate objectives and implement the 2030 Agenda for Sustainable Development.
2. In line with the European Union's commitment for a sustainable development as pointed out in the package of measures on Sustainable Finance adopted by the Commission in May 2018, this Consultation Paper is proposing changes to delegated acts adopted under the UCITS Directive and the AIFMD to accomplish the mandate received by the Commission in July 2018 aiming at integrating sustainability risks in internal processes and procedures of UCITS management companies and AIFMs. In line with the Commission's mandate, the advice covers policy proposals with regard to three areas of the UCITS and AIFMD Level 2 frameworks: organisational requirements, operating conditions and risk management.
3. With regard to organisational requirements, ESMA is proposing changes in the following areas of the UCITS and AIFMD frameworks:
  - Article 4 of the Commission Directive 2010/43/EU on "General Requirements on Procedures and Organisation"
  - Article 5 of the Commission Directive 2010/43/EU on "Resources"
  - Article 9 of the Commission Directive 2010/43/EU on "Control by Senior Management and Supervisory Function"
  - Article 22 of the Commission Delegated Regulation (EU) 231/2013 on "Resources"
  - Article 57 of the Commission Delegated Regulation (EU) 231/2013 on "General Requirements"
  - Article 60 of the Commission Delegated Regulation (EU) 231/2013 on "Control by the Governing Body, Senior Management and Supervisory Function"

4. With regard to operating conditions, ESMA is proposing changes in the following areas of the UCITS and AIFMD frameworks:
  - Article 18 of the Commission Delegated Regulation (EU) 231/2013 on “Due Diligence”
  - Article 23 of the Commission Directive 2010/43/EU on “Due Diligence Requirements”
5. With regard to risk management, ESMA is proposing changes in the following areas of the UCITS and AIFMD frameworks:
  - Article 38 of the Commission Directive 2010/43/EU on “Risk Management Policy”
  - Article 40 of the Commission Delegated Regulation (EU) 231/2013 on “Risk Management Policy”
6. ESMA has prepared a preliminary qualitative cost-benefit analysis with a view to getting stakeholder input to better identify and describe, where possible, costs and benefits of the proposed changes. In this context, one needs to take into account that the absence of a common methodology to understand what constitutes sustainability risks and factors as this might imply additional research and implementation costs for fund managers. Moreover, the risk of confusing (or distorting) market participants and investors should also be carefully considered in this context.

### *Benefits*

7. The proposed changes would provide clarity on regulatory expectation concerning the integration of sustainability risks and factors by UCITS management companies and AIFMs. This will improve the quality of the products offered by ensuring:
  - a more adequate risk management by relevant entities and enhance the risk-adjusted performance of their products benefitting end-investors, particularly over the long-term;
  - a coherent approach across sectors and Member States with regard to the integration of sustainability factors by relevant entities covering, among others, the areas of governance, operating conditions and risk management.
8. In addition, the integration of sustainability risks and factors in UCITS management companies' and AIFMs' processes might attract new investors and increase trust in the financial system, as a consequence. Evidence mentioned in the Impact Assessment presented by the European Commission suggests that the markets will reward companies that come up with innovative approaches to address ESG factors.<sup>4</sup>

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<sup>4</sup> Commission Staff Working Document, Impact Assessment (SWD(2018) 264 final), page 53.

### *Costs*

9. The costs for UCITS management companies and AIFMs to integrate sustainability risks and factors in their internal processes will depend on the existing level of integration of relevant market participants. The latter may vary given the fact that some Member States have already national provisions on the integration of sustainability risks and factors.
10. Depending on the current level of integration of sustainability risks and factors by UCITS management company and AIFMs, the proposed approach set out in this Consultation Paper could involve costs for hiring additional staff, buying relevant data from third-party vendors, more systematic integration in the investment decision process and risk assessment, possible further task specialisation and more active engagement with companies on topics related to sustainability. In this context, the Impact Assessment provided by the European Commission indicates, however, that overall costs may remain limited even for smaller players.<sup>5</sup>
11. ESMA considers that potential and incremental costs that UCITS management companies and AIFMs will face when reviewing and updating internal processes and procedures in order to integrate sustainability risks and factors might have both one-off and ongoing nature, arguably linked to: a) (direct) costs linked to the update/review of the existing procedural arrangements (e.g. the review and/or the update of the arrangements for the identification of types of conflicts of interest, the review and/or the update of the arrangements for due diligence requirements) b) (direct) initial and ongoing IT costs to update current structures and programs; c) (direct) relevant organisational and HR costs linked to the qualification of UCITS management company's and AIFM's staff or training; d) possible (depending on current arrangements of relevant UCITS management companies and AIFMs) direct and on-going costs for buying relevant data from third-party vendors; e) initial and on-going costs for reviewing and updating existing risk management and other control mechanisms.

### *Conclusion*

12. Clarifying the regulatory expectations on the integration of sustainability risks and factors in the areas of organisation, operating conditions and risk management serves the purpose of avoiding different approaches across market participants and Member States. It is therefore possible to conclude that the approach proposed in this Consultation Paper will increase consumer protection and ensure a level playing field among the financial market participants.
13. ESMA believes that the policy approach proposed in this Consultation Paper is able to strike a good balance between the need for harmonisation on the one hand and the need to maintaining flexibility in some aspects and will achieve the intended objective of fulfilling the Commission's mandate without imposing unnecessary burden on the relevant entities.

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<sup>5</sup> Commission Staff Working Document, Impact Assessment (SWD(2018) 264 final), page 42.

14. Therefore, the benefits of such approach are expected to be higher than the expected costs due to the adoption of harmonised criteria that would ensure more clarity and a coherent approach across the EU as regards the integration of sustainability risks and factors by the relevant entities.

**Question to stakeholders**

**Q13: What level of resources (financial and other) would be required to implement and comply with the proposed changes (risk management arrangements, market researches and analyses, organisational costs, IT costs, training costs, staff costs, etc., differentiated between one off and ongoing costs)? When answering this question, please also provide information about the size, internal organisation and the nature, scale and complexity of the activities of your institution, where relevant.**

<b>Information requested</b>	<b>Firm response</b>
Firm size (annual turnover in euro)	
Number of employees	
Firm complexity (low/medium/high)	
Expected costs from market research related to ESG factors (in euro)	
Expected IT costs related to ESG factors, (in euro)	Initial:
	On-going:
Expected training costs related to ESG factors (in euro)	Initial:
	On-going:
Other expected organisational costs related to ESG factors (in euro) – <i>please describe</i>	Initial:
	On-going:

## 5.2 Annex II - Summary of questions

**Q1: How do you understand or how would you define the notion of “sustainability risks” for the purposes of the delegated acts adopted under the UCITS Directive and AIFMD?**

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

**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)?**

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

**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.**

**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?**

**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?**

**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?**

**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.**

**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.)?)

**Q11: Do you see merit in amending risk management provisions relating to 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)?**

**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?**

**Q13: What level of resources (financial and other) would be required to implement and comply with the proposed changes (risk management arrangements, market researches and analyses, organisational costs, IT costs, training costs, staff costs, etc., differentiated between one off and ongoing costs)? When answering this question, please also provide information about the size, internal organisation and the nature, scale and complexity of the activities of your institution, where relevant.**

### 5.3 Annex III – List of relevant articles

The table below lists all the relevant articles of the Commission Directive 2010/43/EU and Commission Delegated Regulation (EU) 231/2013 relating to organisational requirements, operating conditions and risk management. While the present draft technical advice provides proposals to amend a number of these provisions only, the full list of relevant articles is provided below in order to allow stakeholders to provide views on whether any other provisions would deserve an amendment in light of the Commission’s request for advice.

<b>Organisational Requirements<sup>6</sup></b>		
<b>Empowerment</b>	<b>Level 1 Articles</b>	<b>Level 2 Articles</b>
Article 12(3) of Directive 2009/65/EC	Article 12(1) of Directive 2009/65/EC	Article 4 of the Commission Directive 2010/43/EU on “General Requirements on Procedures and Organisation”
Article 14(2) of Directive 2009/65/EC	Article 14(1) of Directive 2009/65/EC	Article 5 of the Commission Directive 2010/43/EU on “Resources”
		Article 6 of the Commission Directive 2010/43/EU on “Complaints Handling”
		Article 7 of the Commission Directive 2010/43/EU on “Electronic Data Processing”
		Article 8 of the Commission Directive 2010/43/EU on “Accounting Principles”
		Article 9 of the Commission Directive 2010/43/EU on “Control by Senior

<sup>6</sup> The simplified classification of relevant provisions under the three sections “organisational requirements”, “operating conditions” and “risk management” in this document has been done in a manner to ensure better clarity and avoid unnecessary technical complexity for the purposes of this Consultation Paper. It is, however, worth noting that the precise classification of the aforementioned provisions under the relevant Level 2 frameworks (as e.g. indicated by the chapter/section names used therein) may differ. By way of example, Article 22 of the Commission Delegated Regulation (EU) 231/2013 on “Resources” is listed under Chapter III Section 1 which is named as “Operating Conditions for AIFMs”, whereas the same Article under the UCITS Level 2 framework (Article 5 of the Commission Directive 2010/43/EU on “Resources”) is listed under Chapter III which is named as “Administrative Procedures and Control Mechanisms”.

		<p>Management and Supervisory Function”</p> <p>Article 10 of the Commission Directive 2010/43/EU on “Permanent Compliance Function”</p> <p>Article 11 of the Commission Directive 2010/43/EU on “Permanent Internal Audit Function”</p> <p>Article 12 of the Commission Directive 2010/43/EU on “Permanent Risk Management Function”</p> <p>Article 13 of the Commission Directive 2010/43/EU on “Personal Transactions”</p> <p>Article 14 of the Commission Directive 2010/43/EU on “Recording of Portfolio Transactions”</p> <p>Article 15 of the Commission Directive 2010/43/EU on “Recording of Subscription and Redemption Orders”</p> <p>Article 16 of the Commission Directive 2010/43/EU on “Recordkeeping Requirements”</p>
<p>Article 12(3) of Directive 2011/61/EU</p> <p>Article 18(2) of Directive 2011/61/EU</p>	<p>Article 12(1) of Directive 2011/61/EU</p> <p>Article 18(1) of Directive 2011/61/EU</p>	<p>Article 22 of the Commission Delegated Regulation (EU) 231/2013 on “Resources”</p> <p>Article 57 of the Commission Delegated Regulation (EU) 231/2013 on “General Requirements”</p>

		<p>Article 58 of the Commission Delegated Regulation (EU) 231/2013 on “Electronic Data Processing”</p> <p>Article 59 of the Commission Delegated Regulation (EU) 231/2013 on “Accounting Procedures”</p> <p>Article 60 of the Commission Delegated Regulation (EU) 231/2013 on “Control by the Governing Body, Senior Management and Supervisory Function”</p> <p>Article 61 of the Commission Delegated Regulation (EU) 231/2013 on “Permanent Compliance Function”</p> <p>Article 62 of the Commission Delegated Regulation (EU) 231/2013 on “Permanent Internal Audit Function”</p> <p>Article 63 of the Commission Delegated Regulation (EU) 231/2013 on “Personal Transactions”</p> <p>Article 64 of the Commission Delegated Regulation (EU) 231/2013 on “Recording of Portfolio Transactions”</p> <p>Article 65 of the Commission Delegated Regulation (EU) 231/2013 on “Recording of Subscription and Redemption Orders”</p> <p>Article 66 of the Commission Delegated Regulation (EU) 231/2013 on</p>
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		“Recordkeeping Requirements”
<b>Operating Conditions</b>		
<b>Empowerment</b>	<b>Level 1 Articles</b>	<b>Level 2 Articles</b>
<p>Article 12(3) of Directive 2009/65/EC</p> <p>Article 14(2) of Directive 2009/65/EC</p>	<p>Article 12(1) of Directive 2009/65/EC</p> <p>Article 14(1) of Directive 2009/65/EC</p>	<p>Article 17 of the Commission Directive 2010/43/EU on “Criteria for Identification of Conflict of Interest”</p> <p>Article 18 of the Commission Directive 2010/43/EU on “Conflict of Interest Policy”</p> <p>Article 19 of the Commission Directive 2010/43/EU on “Independence in Conflicts Management”</p> <p>Article 20 of the Commission Directive 2010/43/EU on “Management of Activities Giving Rise to Detrimental Conflicts of Interest”</p> <p>Article 21 of the Commission Directive 2010/43/EU on “Strategies for the Exercise of Voting Rights”</p> <p>Article 22 of the Commission Directive 2010/43/EU on “Duty to Act in the Best Interest of UCITS and their Unit-Holders”</p> <p>Article 23 of the Commission Directive 2010/43/EU on “Due Diligence Requirements”</p> <p>Article 24 of the Commission Directive 2010/43/EU on “Reporting Obligations in Respect of Execution of</p>

		<p>Subscription and Redemption Orders”</p> <p>Article 25 of the Commission Directive 2010/43/EU on “Execution of Decisions to Deal on Behalf of the Managed UCITS”</p> <p>Article 26 of the Commission Directive 2010/43/EU on “Placing Orders to Deal on Behalf of UCITS with Other Entities for Execution”</p> <p>Article 27 of the Commission Directive 2010/43/EU on “General Principles”</p> <p>Article 28 of the Commission Directive 2010/43/EU on “Aggregation and Allocation of Trading Orders”</p> <p>Article 29 of the Commission Directive 2010/43/EU on “Safeguarding the Best Interests of UCITS”</p>
<p>Article 12(3) of Directive 2011/61/EU</p> <p>Article 14(4) of Directive 2011/61/EU</p> <p>Article 18(2) of Directive 2011/61/EU</p>	<p>Article 12(1) of Directive 2011/61/EU</p> <p>Article 14 of Directive 2011/61/EU</p> <p>Article 18(1) of Directive 2011/61/EU</p>	<p>Article 16 of the Commission Delegated Regulation (EU) 231/2013 on “General Obligations for Competent Authorities”</p> <p>Article 17 of the Commission Delegated Regulation (EU) 231/2013 on “Duty to Act in the Best Interests of the AIF or the Investors in the AIF and the Integrity of the Market”</p> <p>Article 18 of the Commission Delegated Regulation (EU) 231/2013 on “Due Diligence”</p>

		<p>Article 19 of the Commission Delegated Regulation (EU) 231/2013 on “Due Diligence When Investing in Assets of Limited Liquidity”</p> <p>Article 20 of the Commission Delegated Regulation (EU) 231/2013 on “Due Diligence in the Selection and Appointment of Counterparties and Prime Brokers”</p> <p>Article 21 of the Commission Delegated Regulation (EU) 231/2013 on “Acting Honestly, Fairly and With Due Skills”</p> <p>Article 23 of the Commission Delegated Regulation (EU) 231/2013 on “Fair Treatment of Investors in the AIF”</p> <p>Article 24 of the Commission Delegated Regulation (EU) 231/2013 on “Inducements”</p> <p>Article 25 of the Commission Delegated Regulation (EU) 231/2013 on “Effective Employment of Resources and Procedures — Handling of Orders”</p> <p>Article 26 of the Commission Delegated Regulation (EU) 231/2013 on “Reporting Obligations in Respect of Execution of Subscription and Redemption Orders”</p> <p>Article 27 of the Commission Delegated Regulation (EU) 231/2013 on “Execution of</p>
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		<p>Decisions to Deal on Behalf of the Managed AIF”</p> <p>Article 28 of the Commission Delegated Regulation (EU) 231/2013 on “Placing Orders to Deal on Behalf of AIFs With Other Entities for Execution”</p> <p>Article 29 of the Commission Delegated Regulation (EU) 231/2013 on “Types of Conflicts of Interest”</p> <p>Article 30 of the Commission Delegated Regulation (EU) 231/2013 on “Aggregation and Allocation of Trading Orders”</p> <p>Article 31 of the Commission Delegated Regulation (EU) 231/2013 on “Conflicts of Interest Policy”</p> <p>Article 32 of the Commission Delegated Regulation (EU) 231/2013 on “Conflicts of Interest Related to the Redemption of Investments”</p> <p>Article 33 of the Commission Delegated Regulation (EU) 231/2013 on “Procedures and Measures Preventing or Managing Conflicts of Interest”</p> <p>Article 34 of the Commission Delegated Regulation (EU) 231/2013 on “Managing Conflicts of Interest”</p> <p>Article 35 of the Commission Delegated Regulation (EU)</p>
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		<p>231/2013 on “Monitoring Conflicts of Interest”</p> <p>Article 36 of the Commission Delegated Regulation (EU) 231/2013 on “Disclosure of Conflicts of Interest”</p> <p>Article 37 of the Commission Delegated Regulation (EU) 231/2013 on “Strategies for the Exercise of Voting Rights”</p>
<b>Risk Management</b>		
<b>Empowerment</b>	<b>Level 1 Articles</b>	<b>Level 2 Articles</b>
Article 51(4) of Directive 2009/65/EC	Article 51(1) of Directive 2009/65/EC	<p>Article 38 of the Commission Directive 2010/43/EU on “Risk Management Policy”</p> <p>Article 39 of the Commission Directive 2010/43/EU on “Assessment, Monitoring and Review of Risk Management Policy”</p> <p>Article 40 of the Commission Directive 2010/43/EU on “Measurement and Management of Risk”</p> <p>Article 41 of the Commission Directive 2010/43/EU on “Calculation of Global Exposure”</p> <p>Article 42 of the Commission Directive 2010/43/EU on “Commitment Approach”</p> <p>Article 43 of the Commission Directive 2010/43/EU on “Counterparty Risk and Issuer Concentration”</p>

		<p>Article 44 of the Commission Directive 2010/43/EU on “Procedures for the Assessment of the Value of the OTC Derivatives”</p> <p>Article 45 of the Commission Directive 2010/43/EU on “Reports on Derivative Instruments”</p>
<p>Article 15(5) of Directive 2011/61/EU</p> <p>Article 19(11) of Directive 2011/61/EU</p>	<p>Article 15 of Directive 2011/61/EU</p> <p>Article 19 of Directive 2011/61/EU</p>	<p>Article 38 of the Commission Delegated Regulation (EU) 231/2013 on “Risk Management Systems”</p> <p>Article 39 of the Commission Delegated Regulation (EU) 231/2013 on “Permanent Risk Management Function”</p> <p>Article 40 of the Commission Delegated Regulation (EU) 231/2013 on “Risk Management Policy”</p> <p>Article 41 of the Commission Delegated Regulation (EU) 231/2013 on “Assessment, Monitoring and Review of the Risk Management Systems”</p> <p>Article 42 of the Commission Delegated Regulation (EU) 231/2013 on “Functional and Hierarchical Separation of the Risk Management Function”</p> <p>Article 43 of the Commission Delegated Regulation (EU) 231/2013 on “Safeguards against Conflicts of Interest”</p>

		<p>Article 44 of the Commission Delegated Regulation (EU) 231/2013 on “Risk Limits”</p> <p>Article 45 of the Commission Delegated Regulation (EU) 231/2013 on “Risk Measurement and Management”</p> <p>Article 67 of the Commission Delegated Regulation (EU) 231/2013 on “Policies and procedures for the valuation of the assets of the AIF”</p> <p>Article 68 of the Commission Delegated Regulation (EU) 231/2013 on “Use of models to value assets”</p> <p>Article 69 of the Commission Delegated Regulation (EU) 231/2013 on “Consistent application of valuation policies and procedures”</p> <p>Article 70 of the Commission Delegated Regulation (EU) 231/2013 on “Periodic review of valuation policies and procedures”</p> <p>Article 71 of the Commission Delegated Regulation (EU) 231/2013 on “Review of individual values of assets”</p> <p>Article 72 of the Commission Delegated Regulation (EU) 231/2013 on “Calculation of the net asset value per unit or share”</p> <p>Article 73 of the Commission Delegated Regulation (EU)</p>
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		<p>231/2013 on “Professional guarantees”</p> <p>Article 74 of the Commission Delegated Regulation (EU) 231/2013 on “Frequency of valuation of assets held by open-ended AIFs”</p>
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