

Directorate-General for Financial Stability, Financial Services and Capital Markets Union
European Commission
1049 Bruxelles/Brussel
Belgium

(uploaded onto the Better Regulation portal)

Brussels, 6th July 2020

Dear Sir/Madam,

ShareAction, the responsible investment advocacy group, welcomes the opportunity to provide input to the **draft Delegated Acts** presented by the European Commission on the **obligation of investment firms, investment funds, mutual funds and insurance firms to advise clients on social and environmental aspects of financial products**, amending

- Delegated Regulation (EU) 2017/565 (Supplementing MiFID II) ([link to response](#))
- Delegated Directive (EU) 2017/593 (Supplementing MiFID II) ([link to response](#))
- Delegated Regulation (EU) 2017/2359 (Supplementing IDD) ([link to response](#))
- Directive 2010/43/EU (UCITS Implementing No.1 Directive) ([link to response](#))

MiFID II, IDD

ShareAction welcomes the proposals to amend delegated regulations under MiFID II and IDD to ensure a better integration of sustainability preferences and risk into organisational requirements and operating conditions for investment firms. However, we believe **more granular requirements are needed on the suitability assessment** and with regards to the integration across the investment chain.

We support the integration of sustainability preferences as part of the suitability assessment, having first assessed the investor's investment objectives, time horizon, and individual circumstances as set out in recital (5) of the amendments to the Delegated Regulation (EU) 2017. However, in this regard we suggest adding a reference to "potential impacts", as outlined in the High-Level Expert Group's final report, that recommends assessing "retail investors' preferences about the sustainable impact of their investments, as a routine component of financial advice".

We also support amendments with the same goal that apply to insurance-based investment products under IDD.

If advisers are to assess the sustainability preferences of retail investors, they should possess the knowledge and resources to do so. As such we believe a

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provision on the lines to that proposed in the amendments to the UCITS Directive, about the “necessary resources and expertise for the effective integration of sustainability risks” should also be included in this draft Delegated Directive with regards to advisory and portfolio management services.

We believe that under the proposed provisions the information made available to retail investors could still be presented in a way that is not “simple and understandable”, as recommended by the HLEG. This especially applies when it comes to the impact of their investments, as there is no common set of sustainability impact metrics and proxies (p.28-29 of the final report). **It is essential that retail investors receive clear and understandable information as foreseen by MiFID II**, also to prevent greenwashing as defined in the taxonomy regulation (focus on marketing as green).

In order to fully reach the aim of this Delegated Directive **a comprehensive review of level 1 legislation would be required**. Such review should address advisers’ remuneration (inducements) and the fact that in our view, retail investors should always be presented with ESG/SRI funds as a default option given they reflect the investor’s investment objectives, including risk tolerance.

Also with regards to the suitability assessment, the proposed measures would only really be effective by reviewing level 1 legislation, in particular by mandating the European Supervisory Authorities to develop a template questionnaire for introducing a consistent framework for the assessment by advisers. We fear that the provisions as they are (without the introduction of a more detailed framework of how to assess sustainability preferences) could lead to the promotion of exclusionary products only (based on negative screening) and neglect the positive impact component of sustainable investing. As 43% of respondents of a study by 2DII on German and French retail investors that were interested in sustainable investing had making an environmental impact in the real economy as their main goal, the assessment of preferences should take due consideration of their positive preferences and non-financial objectives (aligned with the ‘sustainability factors’). In this sense, we do not think the definition set out in Article 1(1) is too narrow, as it refers to SFDR art.8 products, which comprise a very wide array of sustainability objectives and can be tailored to the retail investor’s preferences. Thus, the issue is not with the definition of the potential offering but rather with the way the suitability assessment is conducted to reflect that, without such a framework.

When assessing the preference in terms of ‘sustainability factors’, the principle of Do No Significant Harm should also be considered, as to ensure the overall sustainability preference is reflected in their product offerings.

UCITS

ShareAction welcomes the provisions introduced by this Delegated Directive to clarify requirements for management companies to better integrate sustainability risks and factors, by amending Directive 2010/43/EU that implements the UCITS Directive.

The integrations set out in art. 1(4) and 1(5) to explicitly integrate sustainability risks, as well as conflicts of interests deriving from them in 1(6) are a useful step forward. However, we believe that **only by expressly defining the relationship between sustainability factors and fiduciary duties will investors effectively integrate these into their mandates**. In fact, investors need a clear framework to take investment decisions also

where a conflict between short-term financial returns and stewardship or other strategies to bring about a positive impact – and ultimately financial returns in the long-term – may arise (consistent with the investment timeframe of the client). Thus, **amendments to the UCITS directive are essential to make sure financial market participants do not limit themselves to assessing their clients' sustainability preferences, but that the full integration of sustainability practices into their investment decisions is compliant with the "best interest of the unit-holders"** as defined in art. 22 of the Directive and that costs arising from the implementation of those strategies are not considered undue costs under the same article. This is a necessary step in aligning this, and other, legislation to the growing tendency to actively consider impact (rather than mere risk) by investors and with encouragement by legislators.

The Disclosure Regulation requires investors to disclose Principal Adverse Impacts, but actions to prevent and mitigate those should be considered as in the best interest of unit-holders for various reasons. This does not only apply to PAIs, but to investors seeking to maximise positive impact as well, which are essential in bringing about tangible real economy changes.

Additionally, it is not sufficient to require investors to disclose their due diligence policies (also under SFDR), but institutional investors should be required to carry out due diligence in the first place.

Contact:

Philipp Woelk, EU Policy Assistant
philipp.woelk@shareaction.org