



To: John Berrigan
Director General
DG FISMA
European Commission

Cc: Martin Spolc, Head of Unit FISMA B2 Sustainable Finance
Tilman Lueder, Head of Unit FISMA C3 Securities Markets
Sven Gentner, Head of Unit FISMA C4 Asset Management
Didier Millerot, Head of Unit FISMA D4 Insurance and Pensions
Irene Tinagli, Chair ECON Committee, European Parliament

Subject: Integration of sustainability factors and risks into MiFID II, IDD and Solvency II

Brussels, 23 July 2020

Dear Mr Berrigan,

We are writing to express the shared concern of our associations regarding the proposed changes to the delegated acts under MiFID II, IDD and Solvency II on the integration of sustainability factors and risks, in particular the introduction of the new definition of 'sustainability preferences' used across all three pieces of legislation.

Our associations are supportive of the European Commission's aim to create a strong framework for sustainable investment that supports the green transition and understand that the current proposals are central to this. However, as currently drafted, we have serious concerns that these proposals will, in fact, restrict customers' access to sustainable finance by unduly limiting the range of products that banks, fund managers and insurers are able to offer them. Restricting the range of available products for end investors would seriously jeopardise the CMU objective of improving investors' access to capital markets. We fully support the approach that the EU needs more developed and liquid financial markets to finance companies and more long term investors to fuel the value chain. We believe this is even more true in the covid 19 recovery context.

We understand the desire to include a direct reference to the Sustainable Finance Disclosures Regulation (SFDR) in MiFID II, IDD and Solvency II. However, it is paramount that these references, including the definition of "sustainability preferences", are aligned with SFDR.

Unfortunately, instead of simply inserting the necessary references to Article 8 products (i.e. products promoting environmental and social characteristics) and Article 9 products (i.e. products pursuing sustainability investments), the proposals introduce additional requirements for Article 8 products in MiFID II, IDD and Solvency II, which are confusing and inconsistent with the SFDR framework.

First, the additional reference to Article 2(17) SFDR creates a new category of Article 8 products which would need to integrate additional sustainable investment considerations intended only for Article 9 products. Second, the draft delegated acts also require the consideration of principal adverse impact (PAI) for Article 8 products. **Both additional requirements are not in line with SFDR and should be deleted.**

This is essential, as these additional requirements for Article 8 products would mean that a customer who expresses sustainability preferences cannot be offered an Article 8 product that does not meet these additional conditions, despite the product being marketed as promoting environmental or social characteristics under SFDR. This will considerably restrict the available product offering excluding many products (including some which comply with national eco-label standards) from being offered to customers who express a preference for sustainable products. It risks sustainable finance becoming a niche market, available only to customers specifically looking for an Article 9 product. This restriction placed on the distribution of sustainable products risks becoming an obstacle to the transition to a green EU economy by preventing the mainstream take-up of sustainable retail financial services products.

In fact, these amendments are at odds with legislators' intentions in drafting the SFDR. SFDR makes a clear distinction between product types and explicitly does not require the consideration of PAI for Article 8 products. This distinction between product types risks being undone through ill-considered amendments under IDD and MiFID II, and has serious investment consequences in its usage regarding sustainability in the prudent person principle in Solvency II.

Similarly, Article 7 of SFDR provides a clear opt-out from consideration of PAI for financial market participants with fewer than 500 employees. It is not appropriate for this to be overridden by amendments to other instruments that would effectively require financial market participants to opt-in if they wish to continue to offer products to investors with sustainability preferences.

To conclude, we strongly believe that the same products must be considered as sustainable throughout all EU legislation, and for this to be achieved changes to the proposed DAs on IDD, MiFID and Solvency II are needed.

Most of our associations have provided formal responses to the recent Better Regulation consultation on the delegated acts applicable to our sectors. We urge you to take our concerns into consideration before adopting the current amendment proposals.

Kind regards,

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