

COMMISSION DELEGATED DIRECTIVE (EU) 2021/1270
of 21 April 2021

amending Directive 2010/43/EU as regards the sustainability risks and sustainability factors to be taken into account for Undertakings for Collective Investment in Transferable Securities (UCITS)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) ⁽¹⁾, and in particular Article 12(3), Article 14(2), and Article 51(4) thereof,

Whereas:

- (1) The transition to a low-carbon, more sustainable, resource-efficient and circular economy in line with the Sustainable Development Goals is key to ensuring the long-term competitiveness of the economy of the Union. In 2016, the Union concluded the Paris Agreement ⁽²⁾. Article 2(1), point (c) of the Paris Agreement sets out the objective of strengthening the response to climate change by, among other means making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.
- (2) Recognising that challenge, the Commission presented the European Green Deal ⁽³⁾ in December 2019. That Green Deal represents a new growth strategy that aims to transform the Union into a fair and prosperous society, with a modern, resource-efficient and competitive economy where there are no net greenhouse gas emissions from 2050 onwards and where economic growth is decoupled from resource use. That objective requires that clear signals are given to investors with regard to their investments to avoid stranded assets and to raise sustainable finance.
- (3) In March 2018, the Commission published its Action Plan 'Financing Sustainable Growth' ⁽⁴⁾, setting up an ambitious and comprehensive strategy on sustainable finance. One of the objectives set out in the Action Plan is to reorient capital flows towards sustainable investments to achieve sustainable and inclusive growth. The impact assessment underpinning subsequent legislative initiatives published in May 2018 ⁽⁵⁾ demonstrated the need to clarify that sustainability factors should be taken into account by management companies as part of their duties towards investors. Management companies should therefore assess not only all relevant financial risks on an ongoing basis, but also all relevant sustainability risks as referred to in Regulation (EU) 2019/2088 of the European Parliament and of the Council ⁽⁶⁾ that, where they occur, could cause an actual or potential material negative impact on the value of an investment. Commission Directive 2010/43/EU ⁽⁷⁾ does not explicitly refer to sustainability risks. For that reason and to ensure that internal procedures and organisational arrangements are properly implemented and adhered to, it is necessary to clarify that processes, systems and internal controls of management companies reflect sustainability risks, and that technical capacity and knowledge is necessary to analyse those risks.

⁽¹⁾ OJ L 302, 17.11.2009, p. 32.

⁽²⁾ Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (OJ L 282, 19.10.2016, p. 1).

⁽³⁾ COM(2019) 640 final.

⁽⁴⁾ COM(2018) 97 final.

⁽⁵⁾ SWD(2018) 264 final.

⁽⁶⁾ Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).

⁽⁷⁾ Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company (OJ L 176, 10.7.2010, p. 42).

- (4) To avoid an uneven playing field for management companies, and investment companies that have not designated a management company, and to avoid related fragmentation, inconsistency and unpredictability in the functioning of the internal market, the rules regarding the integration of sustainability risks should also apply to investment companies, taking into account the principle of proportionality.
- (5) To maintain a high standard of investor protection, management companies should, when identifying the types of conflicts of interest the existence of which may damage the interests of a UCITS, include conflicts of interest that may arise as a result of the integration of sustainability risks in their processes, systems and internal controls. Those conflicts may include conflicts arising from remuneration or personal transactions of relevant staff, conflicts of interest that could give rise to greenwashing, mis-selling or misrepresentation of investment strategies and conflicts of interests between different UCITS managed by the same management company.
- (6) Pursuant to Regulation (EU) 2019/2088 management or investment companies that are obliged to consider principal adverse impacts of investment decisions on sustainability factors, or consider those principal adverse impacts voluntarily, are obliged to disclose how their due diligence policies take those principal adverse impacts into account. To ensure consistency between Regulation (EU) 2019/2088 and Directive 2010/43/EU, that obligation should be reflected in Directive 2010/43/EU.
- (7) Directive 2010/43/EU should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2010/43/EU

Directive 2010/43/EU is amended as follows:

- (1) in Article 3, the following points 11 and 12 are added:

11. “sustainability risk” means sustainability risk as defined in Article 2, point (22), of Regulation (EU) 2019/2088 of the European Parliament and of the Council (*);
12. “sustainability factors” means sustainability factors as defined in Article 2, point (24), of Regulation (EU) 2019/2088.

(*) Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).;

- (2) in Article 4(1), the following subparagraph is added:

‘Member States shall ensure that management companies take into account sustainability risks when complying with the requirements laid down in the first subparagraph.’;

- (3) in Article 5, the following paragraph 5 is added:

‘5. Member States shall ensure that for the purposes laid down in paragraphs 1, 2 and 3, management companies retain the necessary resources and expertise for the effective integration of sustainability risks.’;

- (4) the following Article 5a is inserted:

‘Article 5a

Obligation for investment companies to integrate sustainability risks in the management of UCITS

Member States shall ensure that investment companies integrate sustainability risks in the management of UCITS, taking into account the nature, scale and complexity of the business of the investment companies.’;

(5) in Article 9(2), the following point (g) is added:

'(g) is responsible for the integration of sustainability risks in the activities referred to in points (a) to (f).';

(6) in Article 17, the following paragraph 3 is added:

'3. Member States shall ensure that, when management companies identify the types of conflicts of interest the existence of which may damage the interests of a UCITS, those management companies include those types of conflicts of interest that may arise as a result of the integration of sustainability risks in their processes, systems and internal controls.;

(7) in Article 23, the following paragraphs 5 and 6 are added:

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

6. Member States shall ensure that where management companies, or, where applicable, investment companies, consider principal adverse impacts of investment decisions on sustainability factors as described in Article 4(1), point (a), of Regulation (EU) 2019/2088, or as required by paragraphs 3 or 4 of Article 4 of that Regulation, those management companies or investment companies take into account such principal adverse impacts when complying with the requirements set out in paragraphs 1 to 4 of this Article.;

(8) in Article 38(1), the second subparagraph is replaced by the following:

'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.'

Article 2

Transposition

1. Member States shall adopt and publish, by 31 July 2022 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those measures from 1 August 2022.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

Entry into force

This Directive shall enter into force on the on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 21 April 2021.

For the Commission
The President
Ursula VON DER LEYEN
