

**COMMISSION DELEGATED REGULATION (EU) 2021/1255****of 21 April 2021****amending Delegated Regulation (EU) No 231/2013 as regards the sustainability risks and sustainability factors to be taken into account by Alternative Investment Fund Managers****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 <sup>(1)</sup>, and in particular Article 12(3), Article 14(4), Article 15(5) and Article 18(2) 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 <sup>(2)</sup>. Article 2(1), point (c) of the Paris Agreement sets out the objective of strengthening the response to climate change by, among others 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 <sup>(3)</sup> 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' <sup>(4)</sup>, 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 <sup>(5)</sup> demonstrated the need to clarify that sustainability factors should be taken into account by Alternative Investment Fund Managers ('AIFMs') as part of their duties towards investors. AIFMs 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 <sup>(6)</sup> that, where they occur, could cause an actual or potential material negative impact on the value of an investment. Commission Delegated Regulation (EU) No 231/2013 <sup>(7)</sup> 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 AIFMs reflect sustainability risks, and that technical capacity and knowledge is necessary to analyse those risks.

<sup>(1)</sup> OJ L 174, 1.7.2011, p. 1.

<sup>(2)</sup> 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. 4).

<sup>(3)</sup> COM(2019) 640 final.

<sup>(4)</sup> COM(2018) 97 final.

<sup>(5)</sup> SWD(2018) 264 final.

<sup>(6)</sup> 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).

<sup>(7)</sup> Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision (OJ L 83, 22.3.2013, p. 1).

- (4) Pursuant to Regulation (EU) 2019/2088 AIFMs 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 Delegated Regulation (EU) No 231/2013, that obligation should be reflected in Delegated Regulation (EU) No 231/2013.
- (5) To maintain a high standard of investor protection, AIFMs should, when identifying the types of conflicts of interest the existence of which may damage the interests of an AIF, 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 AIFs managed by the same AIFM.
- (6) Delegated Regulation (EU) No 231/2013 should therefore be amended accordingly.
- (7) Competent authorities and AIFMs should be given sufficient time to adapt to the new requirements contained in this Regulation. Its application should therefore be deferred,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

Delegated Regulation (EU) No 231/2013 is amended as follows:

- (1) in Article 1, the following points (6) and (7) are added:

- '(6) "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 (\*);
- (7) "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 18, the following paragraphs 5 and 6 are added:

'5. AIFMs shall take into account sustainability risks when complying with the requirements set out in paragraphs 1 to 3.

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

- (3) in Article 22, the following paragraph 3 is added:

'3. For the purposes of paragraph 1, AIFMs shall retain the necessary resources and expertise for the effective integration of sustainability risks.;

- (4) in Article 30, the following subparagraph is added:

'AIFMs shall ensure that when identifying the types of conflicts of interest, the existence of which may damage the interests of an AIF, they shall 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.;

- (5) in Article 40, paragraph 2 is replaced by the following:

'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.;

(6) in Article 57(1), the following subparagraph is added:

‘AIFMs shall take into account sustainability risks when complying with the requirements laid down in the first subparagraph.’;

(7) in Article 60(2), the following point (i) is added:

‘(i) is responsible for the integration of sustainability risks in activities referred to in points (a) to (h).’.

#### *Article 2*

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

It shall apply from 1 August 2022.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 21 April 2021.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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