

*On behalf of the Public Affairs Executive (PAE) of the EUROPEAN PRIVATE EQUITY AND VENTURE CAPITAL INDUSTRY*

6 July 2020

**Feedback on the European Commission's Draft Delegated Regulation - Integration of sustainability risks and factors related to alternative investment fund managers**

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Invest Europe welcomes the Commission's principles-based, non-prescriptive approach. Allowing for a level of discretion is key to strike a proper balance between the need for harmonisation and the need for flexibility, as such avoiding imposing unnecessary, additional burden on AIFMs, in particular small and mid-market firms with lower income and ability to absorb additional analysis and reporting costs, and enabling AIFMs to align the implementation of the new requirements with their business needs and those of their individual portfolio companies and investors. In addition, in light of the diversity<sup>1</sup> among market practitioners within every industry, it is crucial to avoid a one-size-fits-all approach and to strive for appropriate rules that are practical, workable and proportionate.

We agree:

- with the recognition of materiality in the definition of sustainability risks. Materiality should be considered by each investment entity for each specific investment.
- that sustainability risk should be part of the overall risk management function of an organisation. Rather than a standalone topic/overriding risk category, sustainability should be considered as one of a number of risks that form part of the overall investment risk matrix, both for the acquisition of new assets and for the management of existing portfolio assets.
- that, as a category of business risks, the identification and management of sustainability risks should be incorporated in existing internal processes, systems, functions, controls and resources with ultimate and explicit responsibility at the top level of an organisation.

However:

- There is inconsistency between the proposed changes to Art 18 and the SFDR. According to the latter, AIFMs taking into account principal adverse impacts at the entity level may *choose not to integrate* them in each and every product they manage (opt-out), they can decide for which product such impacts are relevant. Under the draft L2 measures, it reads like the new para 6 does not leave the choice to AIFMs applying the adverse impact assessment to opt-out at the product level.

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<sup>1</sup> In relation to their level of experience in integrating ESG factors in decision-making, investment management and disclosure, to the type of asset invested into and the material relevance of ESG factors to such assets, to the size of the actual firms and their portfolio companies, and to the nature, scope and complexity of the firms' activities and investment strategies

- As proportionality will be key, it may be useful to clarify that para 2 of Art 22 continues to apply to para 1 and the new para 3. Also, we believe that “real”, established expertise is very difficult to achieve (as recognised in [ESMA’s Final Report](#), point 20) and this concept does not correspond to the reality of what will be put in place by AIFMs to ensure sufficient knowledge of the subject matter. We suggest including other wordings such as “sufficient knowledge or skills”.
- We see no need for a specific para on the identification of potential conflicts of interest (“Col”) as regards the integration of sustainability risk. While issues such as those listed in the Recitals would give rise to other regulatory issues (e.g. being considered as failure to act with due skill, care and diligence, or to act in the best interests of the AIF), we do not see how they can give rise to conflicts or impact the Col policy. Conflicts arise out of duties, or own interests. It is hard to see how the integration of sustainability risk (i.e. financial impact on portfolio) could create new duties, or new own interests which would diverge from the interests of the AIFs or investors in the AIFs. If they did, the existing provision in Art 31(2)(a) is already expansive enough to require the identification, mitigation and management of such conflicts. Including the new language could be confusing in that it might lead some people mistakenly to think that firms have duties to promote sustainability outside the context of their contractual or fiduciary duties to the fund and the investors in the fund. The outcome could be different in relation to principal adverse impacts on sustainability factors. In addition, and as regards the remuneration policy (which may be an element to prevent Col), the responsibility under the draft L2 measures seems more stringent than in the SFDR.



### Contact

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### About the PAE

The Public Affairs Executive (PAE) consists of representatives from the venture capital, mid-market and large buyout parts of the private equity industry, as well as institutional investors and representatives of national private equity associations (NVCAs). The PAE represents the views of this industry in EU-level public affairs and aims to improve the understanding of its activities and its importance for the European economy.

### About Invest Europe

Invest Europe is the association representing Europe's private equity, venture capital and infrastructure sectors, as well as their investors.

Our members take a long-term approach to investing in privately held companies, from start-ups to established firms. They inject not only capital but dynamism, innovation and expertise. This commitment helps deliver strong and sustainable growth, resulting in healthy returns for Europe's leading pension funds and insurers, to the benefit of the millions of European citizens who depend on them.

Invest Europe aims to make a constructive contribution to policy affecting private capital investment in Europe. We provide information to the public on our members' role in the economy. Our research provides the most authoritative source of data on trends and developments in our industry.

Invest Europe is the guardian of the industry's professional standards, demanding accountability, good governance and transparency from our members.

Invest Europe is a non-profit organisation with 25 employees in Brussels, Belgium.  
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