UKSIF
UK Sustainable Investment and Finance Association

UKSIF suggested responses to key questions in the European Commission consultation on institutional investors' and asset managers' duties regarding sustainability.

The High Level Expert Group's proposed duty on European investors will be wide ranging and has the potential to significantly impact all part of the investment chain. UKSIF supports this proposal and we will argue for a investor duty which incorporates sustainability factors, raising standards for laggard firms, while allowing leaders the flexibility to innovate.

We strongly encourage members to put forward individual responses to some or all of the questions in the consultation. To make this easier we have provided suggested answers to key questions below.

Summary:

- UKSIF is in favour of a European-wide duty on investors which clarifies their responsibilities with regard to consideration of ESG factors.
- This should require investors to consider financially material ESG factors and clarify that they may consider non-financial factors in certain circumstances.
- The UK Government has said it is "minded" to amend the law for trust-based pension schemes to clarify fiduciary duty. The EU should mirror the UK's approach.
- While clarification of investors' duties is a useful step forward, proscribing how ESG factors should be considered would be extremely unhelpful.

1) Do you think relevant investment entities should consider sustainability factors in their investment decision-making?

- Yes. We welcome the HLEG recommendation that a universal concept of fiduciary duty is established at the European level and it is important the European Commission take this forward. We recommend the Commission mirror the approach taken in the UK.
- The Commission should look to clarify investors' duties in law for three key reasons:
    - It removes the still widely held misconception that schemes cannot consider ESG or ethical factors in investment decisions.
    - It makes clear the expectation that all financially material factors should be considered by schemes, including where these arise from ESG considerations.
    - It makes clear that, under certain circumstances, non-financial considerations may be considered, for example where end-beneficiaries do not wish to invest in a particular sector on moral grounds, or where a pension scheme member wishes to enrol in a fund geared towards social impact investment.

2) What are the sustainability factors that the relevant investment entities should consider?

- Investors should be required to consider all financially material ESG factors
    - ESG factors are interlinked and should not be viewed in silos, separate from each other.
    - Materiality will vary between sectors and over different time horizons, BoA outline this in research conducted in 2015/16.
    - An ever increasing wealth of evidence
        - Arabesque and Oxford University meta study, From the Stockholder to the Stakeholder

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        - MSCI, [Can ESG add alpha?]
        - ILG, [The value of responsible investment]
    - Climate has had most attention recently including BoE report, TCFD, legislation such as France article 173.
    - In the UK guidance introduced by TPR in summer 2016 was welcomed, but still not enough: 53% of pension professionals viewed climate risk as "overblown nonsense".

3) Based on which criteria should the relevant investment entities consider sustainability factors in their investment decision making?

- We think the EU investor duty law should mirror the concept of "fiduciary duty" in the UK.
- Two key criteria where sustainability is considered by investment entities:
    - Where ESG factors are financially material investors should be required to consider them. This is the case for pension scheme trustees in the UK. Materiality will vary between firms, sectors and time horizons and is outlined in Question 2.
    - Where ESG factors are non-financial, firms may consider them in certain circumstances. For example firms may consider such factors where there is demand from clients, beneficiaries or pension scheme members. In the UK there is a two stage test: First that trustees have reason to believe beneficiaries share the concern, and second that there is no risk of significant detriment to the fund.
        - Investments which include consideration of such factors include social investment, impact investment, ethical investment and values-based investment.
        - In the UK the number of people motivated solely by money has fallen from 45% to 39% and this represents an opportunity for firms.
        - UKSIF's Good Money Week polling report is available here.

4) Which of the following entities should consider sustainability factors in their investment decision-making? (Possibility to select several answers). If so, please indicate the level of impact that this would have (1 is the smallest impact and 5 is the highest impact).

All and 5

9) In which area should relevant investment entities consider sustainability factors within their investment decision-making?

Yes to all.

10) Within the area of governance, which arrangements would be most appropriate to enable the integration of sustainability factors? (1 is the not appropriate and 5 is the very appropriate).

All may be appropriate for individual firms. We would rather flexibility in how firms approach their responsibilities on ESG and RI to allow for innovation, and would be hesitant for rigid proscription in law. Ideally, however, education, training and responsibility relating to sustainability would be integrated throughout an organisation, rather than it being siloed in a particular department, committee or board member.

In the UK the Law Commission has recommended that pension schemes outline their approach to ESG, ethical investment and stewardship. For trust-based schemes these policies should be included in the Statement of Investment Principles (SIP) while for contract-based schemes the provider's approach should be published by the Independent Governance Committee. LGPS schemes are already required to include this information in the SIP.

11) Should insurance and pension providers consult their beneficiaries on an annual/periodic basis on their preference as regards sustainability factors?

Yes. A comply or explain approach would be a proportionate measure to be taken at EU level.

15) Do you think that uniform criteria to perform sustainability risk assessments should be developed at EU level?

No. As we have stated, risk assessments should be conducted on the basis of materiality which will differ between firms, sectors and time horizons. EU level intervention in the form of legislative or regulatory intervention on this aspect is unnecessary and would be unhelpful.

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