AMIC
The buy side voice of ICMA

DG FISMA – Investor Duties and asset managers' duties regarding sustainability

The ICMA's Asset Management and Investors Council (AMIC) was established in March 2008 to represent the buy-side members of the ICMA membership. ICMA is one of the few trade associations with a European focus having both buy-side and sell-side representation. Our investor members represented by the AMIC would like to take this opportunity to comment on the European Commission's consultation on investor duties and asset managers' duties regarding sustainability.

We will not be responding to the consultation in full as AMIC is only concerned with the potential legislative consequences of the initiative to clarify investor duties, which is not directly addressed in the consultation. Furthermore, we may comment in greater detail once the final report of the sustainability High-Level Expert Group (HLEG) is published and an Action Plan is adopted by the European Commission with more details on investor duties.

AMIC members support the intention to clarify 'investor duties' to consider material ESG issues in investment decisions, where appropriate and consistent with the time horizon of the investment. We believe that the current understanding of 'fiduciary duty' by asset owners and asset managers already takes ESG factors into account over the relevant time horizon of the asset owners' investment. We agree that a formal reiteration of this common understanding could further accelerate the integration of material ESG factors in investment decisions, where relevant. A workable approach, however, would require a proportionate framework allowing for flexibility for application across a wide range of different investment strategies and horizons.

Consequently, AMIC members do not believe that a legislative approach to codify investor duties is the appropriate way to achieve the goal sought. Rather, guidance, issued by the European Commission or the European Supervisory Authorities (ESAs), is the most appropriate instrument to add clarity to 'investor duty'. Attempting to amend several pieces of primary legislation in one cumbersome process would likely take many years, delaying the formal adoption by asset owners and asset managers of this 'investor duty'. Furthermore, well-meaning but unworkable investor duties could appear during the legislative process which could risk undermining the objectives of the exercise. Finally, a legislative approach would add a hard-coded layer of regulation to existing directives and regulations, increasing the compliance burden unduly where guidance from the Commission or ESAs could achieve the objective of clarifying the place ESG should have in 'investor duties' more swiftly and clearly.

Care should also be taken to avoid excessive reliance on reporting, which could distract from the important goal of the investment decision-making, with little benefit to ESG goals, investors or society in general.

This is an area where the ESAs could play a greater role. Indeed, AMIC members welcome the proposals reviewing the ESA Regulations which require the ESAs to consider ESG factors and to provide guidance on how firms can consider sustainability in their investment decisions. An initiative to provide clarity around investor duties could be the first project under the new powers of the ESAs once the review legislation has been agreed by the European Parliament and Council.

ENDS

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