

POSTED ONLINE

DECISION
5/959/22.7.2022
of the Board of Directors

Subject: Amendment of Decision No. 15/633/20.12.2012 of the Board of Directors of the Hellenic Capital Market Commission "Organisational requirements for the operation of MFMC, conflict of interest, conduct regulation, risk management and the content of the contract between depositary and management company" (Greek Government Gazette B/12/10.1.2013).

**THE BOARD OF DIRECTORS
OF THE HELLENIC CAPITAL MARKET COMMISSION**

Having considered:

1. The Commission Delegated Directive (EU) 2021/1270 of 21 April 2021 amending Directive 2010/43/EU concerning sustainability risks and sustainability factors to be taken into account for undertakings for collective investment in transferable securities (UCITS)' (L 277/141).
2. Cases (a) and (b) of paragraph 2 and paragraph 8 of Article 14, Article 23, paragraphs 2 and 3 of Article 37 and paragraphs 1 and 4 of Article 60 of Law 4099/2012 "Undertakings for collective investment in transferable securities and mutual fund management companies, Directive 2009/65/EC. Adjustment of Greek legislation to the provisions of Directives 2010/ 78/EU, 2010/73/EU, 2011/96/EU, 2009/133/ EC, 2004/ 113/EC. European Cooperative Society. Measures for the implementation of Regulations (EC) 1338/2001 and (EU) 1210/2010 on the protection of the euro and other provisions" (Government Gazette A/250/20.12.2012).
3. Paragraph 2 of Article 13 of Law 2166/1993 (Government Gazette A' 137), as amended by par. 3 of article 18 of Law 2198/1994 (Government Gazette A' 43) and was replaced by par. 6 of article 39 of Law 2324/1995 (Government Gazette A' 146).
4. Article 90 of Presidential Decree 63/2005 "Codification of legislation on government and government bodies" (Government Gazette A/98/2005).
5. Decision no 15/633/20.12.2012 of the Board of Directors of the Hellenic Capital Market Commission "Organisational requirements for the operation of MFMC, conflict of interest, conduct regulation, risk management and the content of the contract between depositary and management company" (Greek Government Gazette B/12/10.1.2013).
6. The fact that the provisions of this Decision incur no expenditure on State Budget.

UNANIMOUSLY DECIDES

Article 1

Article 3 of Decision No. 15/633/20.12.2012 of the Board of Directors of the Hellenic Capital Market Commission is amended as follows:

"Definitions

For the purposes of this Decision, the following definitions shall apply, in addition to the definitions of Law 4099/2012:

1. "Client" means any natural or legal person or undertaking, including UCITS, to whom MFMC provides the service of collective portfolio management of paragraph 1 of Article 12 of Law 4099/2012 or the additional services of paragraph 2 of Article 12 of Law 4099/2012.
2. 'Unit-holder' means any natural or legal person who holds one or more UCITS units.
3. A "Competent Person" in relation to MFMC may be one of the following persons:
 - a) managing executive or shareholder of MFMC,
 - b) an employee of MFMC, as well as any other natural person who provides collective portfolio management services on behalf and under the responsibility of MFMC and
 - c) the natural person directly providing services to MFMC, in the framework of any form of cooperation relationship with a third company to which MFMC has assigned under article 22 of Law 4099/2012 the conduct on behalf of one or more of its functions concerning the management of collective portfolios,
4. "Senior Manager": the person who directs the MFMC as referred to in Article 16 of Law 4099/2012.
5. "Board of Directors": the board of directors of MFMC
6. "Supervisory body": the natural persons or the body responsible for the supervision of the senior management of MFMC and for the evaluation and periodic review of the adequacy and effectiveness of the risk management process, as well as the policies, arrangements and procedures that MFMC has and puts in place for its compliance with the provisions of Law 4099/2012. In the event that it is not appointed by MFMC , the supervisory body means the board of directors of MFMC,
7. 'Counterparty risk': the risk of loss for the UCITS that may arise if the UCITS counterparty to a transaction does not meet its obligations until the transaction is finalised/cleared;
8. "Liquidity risk": the risk that may arise if a position in the UCITS portfolio cannot be liquidated or "closed" at a limited cost within a reasonable time, making it difficult for the UCITS to comply with its obligations under paragraph 1 of Article 8 of Law 4099/2012.
9. 'Market risk': the risk of loss for the UCITS, which may result from the fluctuation of the market value of the UCITS portfolio positions, due to changes in market variables such as interest rates, foreign exchange rates, equity and commodity prices or the issuer's credit worthiness.

10. 'Operational risk': the risk of loss for the UCITS, which may result from insufficient internal procedures and weaknesses regarding the personnel and systems of MFMC or from external factors. Operational risk includes legal risk, documentation risk and risk that may arise in the course of the execution of trading, settlement and valuation procedures on behalf of the UCITS.

11. 'Sustainability risk' means the sustainability risk as defined in point (22) of Article 2 of Regulation (EU) 2019/2088 of the European Parliament and of the Council.

12. 'Sustainability factors' means the sustainability factors as defined in point (24) of Article 2 of Regulation (EU) 2019/2088."

Article 2

Article 4 of Decision No. 15/633/20.12.2012 of the Board of Directors of the Hellenic Capital Market Commission is amended as follows:

'General procedural and organisational requirements

1. The MFMC fulfils the following conditions:

a) establish and maintain decision-making procedures, as well as an organisational structure and internal rules, which clearly and in a documented manner define the hierarchy within the MFMC, the process of handling the issues from a higher level in the hierarchy and the allocation of functions and responsibilities;

(b) ensure that the relevant persons are aware of the procedures to be followed in the performance of their duties;

(c) establish and maintain appropriate internal control mechanisms to ensure compliance of the MFMC with the decisions and procedures at all levels of its hierarchy;

(d) establish and maintain an effective internal information and communication process at all levels of its hierarchy, as well as an effective flow of information from and to third parties involved; and

(e) keep appropriate and regular records of its work and internal organisation.

MFMC takes into account the nature, extent and complexity of its operations, as well as the nature and scope of the services and activities it performs in the context of its operations.

The MFMC shall take into account sustainability risks when complying with the requirements set out in the first subparagraph.

2. MFMC shall establish and maintain systems and procedures appropriate to safeguard the security, integrity and confidentiality of the information, taking into account the nature of the information in question.

3. MFMC shall establish and maintain an appropriate policy of continuity of its operations that ensures in case of interruption of its systems and procedures the preservation of the necessary data and functions and the maintenance of the services and

its activities or, where that is not possible, the timely retrieval of the necessary data and functions and the timely restoration of the conduct of its services and activities.

4. MFMC shall establish and maintain accounting policies and procedures so that it can, at the request of the Hellenic Capital Market Commission, timely submit to it financial statements that reflect the true and fair view of its financial situation and meet all applicable accounting standards and rules.

5. The MFMC shall regularly monitor and evaluate the adequacy and effectiveness of the systems, internal control mechanisms and arrangements referred to in paragraphs 1 to 4 and take appropriate measures to address any deficiencies.

6. The MFMC lays down rules on the portfolio management of UCITS and client portfolios. In this context, MFMC, by decision of its Board of Directors, defines detailed procedures for the implementing and execution of investment decisions, which concern, inter alia, the role of the Investment Committee, the maximum permitted quantitative investment limits per Manager and the determination of the responsibility for monitoring and evaluating the management.

MFMC submits to the Hellenic Capital Market Commission the details of the manager and the members of its Investment Committee (CV, instrument of appointment, questionnaire, copy of criminal record, certificate of non-bankruptcy, solemn declaration of Law 1599/1986) within five (5) working days of their appointment. Moreover, MFMC notifies the Hellenic Capital Market Commission of any revocation of their appointment or resignation within five (5) working days, while stating the reasons for the revocation.

7. MFMC ensures that transactions or other management operations on behalf of UCITS and clients are entered into and confirmed by different persons, so that there is no possibility to subsequently change the terms of transactions or other management operations.'

Article 3

Article 5 of Decision No. 15/633/20.12.2012 of the Board of Directors of the Hellenic Capital Market Commission is amended as follows:

'Resources

1. MFMC employs staff with the skills, knowledge and expertise necessary for the effective performance of their duties.

2. MFMC has the necessary resources and know-how to be able to effectively monitor the activities carried out by third parties on its behalf upon assignment, in particular as regards the management of the risks that may arise from the assignment.

3. MFMC ensures that the exercise of more functions by the competent persons does not prevent or is likely to prevent these persons from performing all their duties diligently, honestly and professionally.

4. For the purposes referred to in paragraphs 1, 2 and 3, MFMC takes into account the nature, extent and complexity of its operations, as well as the nature and scope of the services and activities it performs in the context of its operations.

5. **For the purposes set out in paragraphs 1, 2 and 3, an MFMC shall maintain the resources and expertise necessary to effectively integrate sustainability risks.';**

Article 4

Article 5^a is added to Decision No. 15/633/20.12.2012 of the Board of Directors of the Hellenic Capital Market Commission is amended as follows:

'Article 5^a

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

MFMC shall integrate sustainability risks in the management of UCITS, taking into account the nature, scale and complexity of its activities.';

Article 5

Article 9 of Decision No. 15/633/20.12.2012 of the Board of Directors of the Hellenic Capital Market Commission is amended as follows:

'Control by senior management and supervisory body

1. MFMC ensures that, when allocating its functions internally, its senior management and, where appropriate, its supervisory body, are responsible for the compliance of MFMC with its obligations under the provisions of Law 4099/2012.

2. MFMC ensures that its senior management:

(a) be responsible for the implementation of the general investment policy of the UCITS managed by MFMC, as specified in the prospectus and the fund rules or instruments of incorporation of each UCITS;

(b) supervise the approval of the investment strategies for each UCITS;

(c) are responsible for the existence in MFMC of a permanent and effective regulatory compliance function, in accordance with Article 10, even if the regulatory compliance function has been assigned and exercised by third parties;

(d) ensure and confirm on a regular basis that the general investment policy, investment strategies and risk limits for each UCITS managed by MFMC are properly and effectively implemented, even where the function of risk management is delegated and exercised by third parties;

(e) approve and evaluate on a regular basis the appropriateness of the internal investment decision making procedures for each UCITS managed by MFMC to ensure that such decisions are consistent with the approved investment strategies; and

(f) approve and evaluate on a regular basis the risk management policy as well as the arrangements, processes and techniques available to MFMC for the implementation of this policy, in accordance with Article 38, including the system for setting limits to the risks of each UCITS managed by MFMC.

(g) be responsible for integrating sustainability risks into the activities referred to in points (a) to (f).

3. MFMC also ensures that its senior management and, where applicable, its supervisory body:

a) evaluate on a regular basis the effectiveness of the policies, arrangements and procedures that MFMC has established for its compliance with its obligations under the provisions of Law 4099/2012; and

(b) take appropriate measures to address any deficiencies.

4. The MFMC shall ensure that its senior management receives on a regular basis, and at least annually, written reports on regulatory compliance, internal control and risk management, indicating in particular whether appropriate corrective action has been taken where deficiencies have been identified.

5. The MFMC shall ensure that its senior management receives on a regular basis reports on the implementation of investment strategies and internal investment decision-making processes, in accordance with points (b) to (e) of paragraph 2.

6. The MFMC shall ensure that its supervisory body receives on a regular basis written reports on the matters referred to in paragraph 4.

Article 6

Article 17 of Decision No. 15/633/20.12.2012 of the Board of Directors of the Hellenic Capital Market Commission is amended as follows:

'Criteria for identification of conflicts of interest cases

1. In order to identify the conflict of interest cases that may arise in the provision of the services and the exercise of the activities of MFMC and which are likely to cause damage to the interests of the UCITS it manages, MFMC shall verify, taking into account certain minimum criteria it has provided for this purpose in its procedures, whether the MFMC itself or a competent person or a person directly or indirectly linked to MFMC with a control relationship is, either as a result of the provision of collective portfolio management services or otherwise, in one of the following situations:

(a) the MFMC or such person is likely to obtain financial benefit or avoid financial loss, to the detriment of the UCITS;

(b) the MFMC or such person has, in relation to the outcome of a service or activity provided to the UCITS or another client or in relation to the outcome of a transaction carried out on behalf of the UCITS or another client, an interest which is different from the interest of the UCITS in the same case;

(c) the MFMC or such person has a financial or other incentive to favour the interests of another client or group of clients to the detriment of the interests of the UCITS;

(d) the MFMC or such person provides the same services as it provides to the UCITS and to another client who is not a UCITS;

(e) the MFMC or such person receives or is to receive from a person other than the UCITS a inducement related to the provision of collective portfolio management services to the UCITS, in the form of money, goods or services, in addition to the commissions or fees provided for that service.

2. MFMC, when determining cases of conflict of interest, shall take into account:

a) the interests of MFMC, including those arising from the fact that MFMC belongs to a group of companies or those arising from the services and activities of MFMC, the interests of clients and the obligations of MFMC towards the UCITS it manages; and

(b) the interests of two or more UCITS managed by MFMC

3. The MFMC shall specify the tasks and duties of the relevant persons who may create conflict of interest situations in the management of the UCITS portfolio.

In this context, MFMC defines incompatible for the specific properties which may create situations of conflict of interest in the exercise of the investment management tasks of collective portfolios and client portfolios. In particular, MFMC shall at least ensure the following:

[(a) MFMC appoints different investment managers for the collective portfolios and the client portfolios managed and]

***ATTENTION: The within [] case (a) was REPEALED by article 1 of the decision of the Board of Directors of the Hellenic Capital Market Commission 3/791/12.7.2017 (Government Gazette B` 2758/08.08.2017).

(b) The investment managers of collective and client portfolios of MFMC may not be:

(aa) members of the board of directors or employees of a company whose securities are included in a portfolio managed by MFMC;

(bb) members of the board of directors of a credit institution or an Investment Services Société Anonyme (AEPEY) or an insurance undertaking
And

(cc) investment managers in a credit institution or in an AEPEY or in an insurance undertaking or in another MFMC or management company.

4. The investment manager shall not accept any duties that could impede the independent decision making related to its duties, unless they have informed and received a specific approval by the management board of MFMC. It may also not accept any fees, benefits or other privileges from any third party, natural or legal person.

5. When identifying the types of conflict of interest the existence of which is likely to harm the interests of a UCITS, MFMC shall include those types of conflict of interest which may arise as a result of the integration of sustainability risks into their processes, systems and internal controls.;

Article 7

Article 23 of Decision No. 15/633/20.12.2012 of the Board of Directors of the Hellenic Capital Market Commission is amended as follows:

"Due diligence requirements

1. MFMC exercises a high level of diligence in the selection and monitoring of investments, in the interest of the UCITS and to ensure the integrity of the market.
2. MFMC has the appropriate knowledge and understanding of the financial instruments included in the portfolio of UCITS it manages.
3. MFMC shall develop written policies and procedures on due diligence and implement effective arrangements to ensure that investment decisions on behalf of the UCITS are made in accordance with the UCITS 'investment purpose, strategy and risk limits.
4. MFMC, in the implementation of the risk management policy and if deemed necessary based on the nature of the intended investment, shall formulate forecasts and prepare analyses regarding the participation of the investment in the composition, liquidity and risk and return profile of the UCITS portfolio prior to the realization of the investment. The analyses shall be carried out only on the basis of reliable and up-to-date information, both quantitatively and qualitatively.

MFMC acts with the required skill, care and diligence when concluding, managing or terminating any agreement with third parties regarding risk management activities. Prior to the conclusion of such agreements, MFMC shall take the necessary measures to verify that third parties have the skills and qualifications to perform the risk management activities reliably, professionally and effectively. The MFMC shall establish methods for the continuous evaluation of the performance of third parties.

5. When complying with the requirements set out in paragraphs 1 to 4, MFMC shall take into account sustainability risks.

6. Where the MFMC or, where applicable, the AEPEY takes into account the main adverse effects of investment decisions on sustainability factors, as described in point (a) of Article 4 (1) of Regulation (EU) 2019/2088, or as required by Article 4 (3) or (4) of that Regulation, those companies shall take into account those main adverse effects when complying with the requirements set out in paragraphs 1 to 4 of this Article.'

Article 8

Article 38 of Decision No. 15/633/20.12.2012 of the Board of Directors of the Hellenic Capital Market Commission is amended as follows:

'Risk management policy

1. The MFMC shall establish and maintain an appropriate and documented risk management policy that identifies the risks to which the UCITS it manages are or may be exposed.

The risk management policy shall include procedures that are necessary for the MFMC to assess the exposure of each UCITS it manages to market, liquidity, viability and counterparty risks, as well as the UCITS 'exposure to all other risks, including operational risks, that may be material for each UCITS it manages.

The MFMC shall include in its risk management policy at least the following elements:

- (a) the techniques, tools and arrangements necessary to comply with the obligations laid down in Articles 40 and 41; and
 - b) the allocation within MFMC of the responsibilities related to risk management.
2. The MFMC shall ensure that the risk management policy referred to in paragraph 1 specifies the terms, contents and frequency of reporting on the functioning of risk management referred to in Article 12 to its management board, senior management and supervisory body.
3. For the purposes of paragraphs 1 and 2, MFMC shall take into account the nature, extent and complexity of its business and of the UCITS it manages.';

Article 9 Entry into force

This decision shall apply from the date of its adoption.

This decision shall be published in the Government Gazette (Issue B').

The Secretary

Alexandra Ninasiou

The President

The A Vice-President

The B Vice President

Vasiliki Lazarakou

Nikolaos Kontaroudis

Anastasia Stamou

The members

Anastasios Virvilios

Panagiotis Giannopoulos

Georgios Leledakis

Georgios Paschas