



## Luxembourg Newsflash - 8 July 2022

# ESG in the banking sector – Integrating sustainability into the MiFID II framework

Two major delegated acts will come into force that amend the MiFID II framework in order to integrate sustainability risks and factors into banks' organisational requirements, rules of conduct and product governance obligations.

In the coming weeks and months, two major delegated acts [1] will come into force that amend the MiFID II framework in order to integrate sustainability risks and factors into banks' organisational requirements, rules of conduct and product governance obligations.

## I. Legal requirements

Banks will have to abide by two key sets of new rules:

### 1. Integrating sustainability preferences into suitability assessments

As of 2 August 2022, banks that provide investment advice or portfolio management to professional and retail clients will be required to consider clients' sustainability preferences in their suitability assessments.

Sustainability preferences are a (potential) client's choices on whether, and to what extent, any of the following financial instruments will be integrated into their investment portfolio:

- products with a minimum proportion of environmentally sustainable investments pursuant to Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (the "EU Taxonomy").

These are investments that (i) substantially contribute to one or more of the six environmental objectives defined in the EU Taxonomy, (ii) must not significantly harm any other environmental objective, (iii) comply with technical screening criteria established by the European Commission and (iv) comply with minimum social and labour standards.

- products with a minimum proportion of sustainable investments pursuant to 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.

These are investments in an economic activity that (i) pursues an environmental or a social objective, provided (ii) that the relevant investments do not significantly harm any other objective and (iii) that such investments comply with minimum social and labour standards.

- products that consider principal adverse impacts on sustainability factors.

Such products try to limit or exclude negative impacts of investments and activities on environmental, social and governance matters.

## 2. Integrating sustainability objectives and factors into product governance

Banks that qualify as product manufacturers and/or distributors will soon be required to integrate sustainability considerations into their overall product governance process.

These new requirements include the following in particular:

- Manufacturers that create and issue financial instruments must integrate sustainability factors and objectives into the definition of their target markets, specify the sustainability-related objectives that a financial instrument is compatible with, and ensure that a financial instrument's sustainability factors are compatible with the sustainability-related objectives of the target market.
- Distributors that offer, recommend or sell investment products and services must ensure that these are compatible with the sustainability-related objectives of the target market and remain consistent with those objectives.

Member States shall adopt and publish, by 21 August 2022 at the latest, the provisions necessary to comply with these requirements. They shall apply those provisions from 22 November 2022.

## II. Practical impacts

Tackling these new rules requires banks to adopt a series of practical measures, including in particular:

- training to enable staff to understand and distinguish the relevant investment products and educate clients on the new concepts;
- review and categorisation of investment products;
- review and update of target markets and the overall product development, approval and testing processes;
- review and update of policies, procedures, processes and contractual documentation;
- adapting internal record-keeping arrangements.

>> To read the Commission Delegated Regulation (EU) 2021/1253 of 21 April 2021 amending Delegated Regulation (EU) 2017/565 as regards the integration of sustainability factors, risks and preferences into certain organisational requirements and operating conditions for investment firms, [click here](#)\_

>> To read the Commission Delegated Directive (EU) 2021/1269 of 21 April 2021 amending Delegated Regulation (EU) 2017/593 as regards the integration of sustainability factors into the product governance obligations, [click here](#)\_

If you need more information, please contact us.

**[1]** Commission Delegated Regulation (EU) 2021/1253 of 21 April 2021 amending Delegated Regulation (EU) 2017/565 as regards the integration of sustainability factors, risks and preferences into certain organisational requirements and operating conditions for investment firms;

Commission Delegated Directive (EU) 2021/1269 of 21 April 2021 amending Delegated Directive (EU) 2017/593 as regards the integration of sustainability factors into the product governance obligations.

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