



PUBLIC STATEMENT ON THE FORTHCOMING IMPLEMENTATION OF THE AMENDMENT TO DELEGATED REGULATION 2017/565 AS REGARDS THE CONSIDERATION OF SUSTAINABILITY PREFERENCES OF CLIENTS IN THE SUITABILITY ASSESSMENT

18 July 2022

Regulation (EU) 2021/1253 of 22 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, will start being implemented on 2 August 2022.

According to the aforementioned regulation, investment firms will include a client's sustainability preferences in the suitability assessment when providing investment advice or discretionary portfolio management. This assessment aims to recommend or integrate the most suitable financial instruments in the client's portfolio, in the sense that they should meet his or her investment objectives, financial situation, knowledge and experience. This integration will mean taking into account the client's sustainability preferences as an additional element. Thus, investment firms will first assess a client's or potential client's other investment objectives, time horizon and individual circumstances, before asking for his or her potential sustainability preferences.

For this purpose, the regulation includes a detailed definition of the sustainability preferences of the clients on which investment firms should collect information:

“a client's or potential client's choice as to whether and, if so, to what extent, one or more of the following financial instruments shall be integrated into his or her investment:

a) a financial instrument for which the client or potential client determines that a minimum proportion shall be invested in environmentally sustainable investments as defined in Article 2, point (1), of Regulation (EU) 2020/852 of the European Parliament and of the Council (Taxonomy Regulation).

b) a financial instrument for which the client or potential client determines that a minimum proportion shall be invested in sustainable investments as defined in Article 2, point (17), of Regulation (EU) 2019/2088 of the European Parliament and of the Council (Disclosure Regulation).

c) a financial instrument that considers principal adverse impacts on sustainability factors where qualitative or quantitative elements demonstrating that consideration are determined by the client or potential client.”

The regulation also contains two additional matters:

- The integration of sustainability risks in the risk management policies and procedures, and
- The consideration of the types of conflicts of interest stemming from the integration of the client's sustainability preferences when identifying the types of conflicts of interest the existence of which may damage the interests of clients.

ESMA is currently reviewing the Guidelines on certain aspects of the MiFID II suitability requirements with the aim, among others, of including the integration of a client's sustainability preferences in the suitability assessment process. The Guidelines have been available for public consultation between February and April 2022, with the numerous responses received being assessed by ESMA when drafting the Final Report of the Guidelines. The Guidelines are expected to be approved in September/October 2022 and they would come into force 6 months after they are translated to all EU official languages.

CNMV intends to include the guidelines, once they come into force, in its supervision procedures.

CNMV informs investment firms that the new obligations will be applicable from 2 August 2022. Therefore, investment firms should have adapted their systems and processes in such a manner that they are capable of asking their clients the appropriate questions, when performing a suitability test, to identify their sustainability preferences. This is for new clients who start receiving financial advice or portfolio management services, while also whenever a test update is applicable. Anyhow, previously assessed clients will have the option to update the information for the suitability assessment, including their sustainability preferences, on their own initiative at any time.

Investment firms may take as general reference the ESMA Guidelines on specific aspects of the MiFID II requirements relating to suitability made available for public consultation, although it is foreseeable that some aspects of the final Guidelines content will change and the differences cannot be specified at present.

Given that this matter is new, it is essential for the personnel of the investment firms collecting information from their clients to have adequate knowledge to be able to explain, in plain language and in a way that is understandable, the different aspects queried regarding their preferences.

Similarly, in a supplementary manner to the effort made by the investment firms to inform their clients about these novelties, CNMV considers it extremely relevant to contribute towards the knowledge of investors on this matter and different resources will be prepared concerning financial education.

CNMV informs the relevant investment firms on the importance of an adequate implementation of the new obligations regarding the suitability assessment in relation to sustainability preferences, the aim being to fulfil the ultimate purpose of the European Commission with its Action Plan on Financing Sustainable Growth to reorient capital flows towards a more sustainable investments in order to attain sustainable growth.