# DIRECTIVES

## 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**

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ([1]), and in particular Article 16(12) and Article 24(13) thereof,

Whereas:

(1) The transition to a low-carbon, more sustainable, resource-efficient and circular economy in line with the Sustainable Development Goals is key to ensuring the long-term competitiveness of the economy of the Union. In 2016, the Union concluded the Paris Agreement ([2]). Article 2(1), point (c), of the Paris Agreement sets out the objective of strengthening the response to climate change by, among others means, making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.

(2) Recognising that challenge, the Commission presented the European Green Deal ([3]) in December 2019. The Green Deal represents a new growth strategy that aims to transform the Union into a fair and prosperous society with a modern, resource-efficient and competitive economy where there are no net greenhouse gas emissions from 2050 onwards and where economic growth is decoupled from resource use. That objective requires that clear signals are given to investors with regard to their investments to avoid stranded assets and to raise sustainable finance.

(3) In March 2018, the Commission published its Action Plan 'Financing Sustainable Growth' ([4]), setting up an ambitious and comprehensive strategy on sustainable finance. One of the objectives set out in the Action Plan is to reorient capital flows towards sustainable investments to achieve sustainable and inclusive growth.

(4) Proper implementation of the Action plan encourages investors' demand for sustainable investments. It is therefore necessary to clarify that sustainability factors, and sustainability-related objectives should be considered within the product governance requirements set out in Commission Delegated Directive (EU) 2017/593 ([5]).

(5) Investment firms manufacturing and distributing financial instruments should consider sustainability factors in the product approval process of each financial instrument and in the other product governance and oversight arrangements for each financial instrument that is intended to be distributed to clients seeking financial instruments with a sustainability-related profile.

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([1]) OJ L 173, 12.6.2014, p. 349.

([2]) Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (OJ L 282, 19.10.2016, p. 1).

([3]) COM(2019) 640 final.

([4]) COM(2018) 97 final.

([5]) Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits (OJ L 87, 31.3.2017, p. 500).

(6) Considering that the target market should be set at a sufficient granular level, a general statement that a financial instrument has a sustainability-related profile should not be sufficient. Investment firms manufacturing and distributing financial instruments should rather specify to which group of clients with sustainability related objectives the financial instrument is supposed to be distributed.

(7) To ensure that financial instruments with sustainability factors remain easily available also for clients that do not have sustainability preferences, investment firms should not be required to identify groups of clients with whose needs, characteristics and objectives the financial instrument with sustainability factors is not compatible.

(8) The sustainability factors of a financial instrument should be presented in a transparent manner to enable the distributor to provide the relevant information to its clients or potential clients.

(9) Delegated Directive (EU) 2017/593 should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

**Amendments to Delegated Directive (EU) 2017/593**

Delegated Directive (EU) 2017/593 is amended as follows:

(1) in Article 1, the following paragraph 5 is added:

‘5. “sustainability factors” means sustainability factors as defined in Article 2, point (24), of Regulation (EU) 2019/2088 of the European Parliament and of the Council (*).

(*) 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 (OJ L 317, 9.12.2019, p. 1).’;

(2) Article 9 is amended as follows:

(a) in paragraph 9, the first subparagraph is replaced by the following:

‘9. Member States shall require investment firms to identify at a sufficiently granular level the potential target market for each financial instrument and specify the type(s) of client with whose needs, characteristics and objectives, including any sustainability related objectives, the financial instrument is compatible. As part of this process, the firm shall identify any group(s) of clients with whose needs, characteristics and objectives the financial instrument is not compatible, except where financial instruments consider sustainability factors. Where investment firms collaborate to manufacture a financial instrument, only one target market needs to be identified.’;

(b) paragraph 11 is replaced by the following:

‘11. Member States shall require investment firms to determine whether a financial instrument meets the identified needs, characteristics and objectives of the target market, including by examining the following elements:

(a) the financial instrument’s risk/reward profile is consistent with the target market;

(b) the financial instrument’s sustainability factors, where relevant, are consistent with the target market;

(c) the financial instrument design is driven by features that benefit the client and not by a business model that relies on poor client outcomes to be profitable.’;

(c) in paragraph 13, the following second subparagraph is added:

‘The sustainability factors of the financial instrument shall be presented in a transparent manner and provide distributers with the relevant information to duly consider any sustainability related objectives of the client or potential client.’;

(d) paragraph 14 is replaced by the following:

‘14. Member States shall require investment firms to review the financial instruments they manufacture on a regular basis, taking into account any event that could materially affect the potential risk to the identified target market. Investment firms shall consider whether the financial instrument remains consistent with the needs, characteristics and objectives, including any sustainability related objectives, of the target market and if it is distributed to the target market, or reaches clients with whose needs, characteristics and objectives the financial instrument is not compatible.’;

(3) Article 10 is amended as follows:

(a) in paragraph 2, the first subparagraph is replaced by the following:

‘2. Member States shall require investment firms to have in place adequate product governance arrangements to ensure that products and services they intend to offer or recommend are compatible with the needs, characteristics, and objectives, including any sustainability related objectives, of an identified target market and that the intended distribution strategy is consistent with the identified target market. Investment firms shall appropriately identify and assess the circumstances and needs of the clients they intend to focus on, so as to ensure that clients’ interests are not compromised as a result of commercial or funding pressures. As part of this process, investment firms shall identify any group of clients with whose needs, characteristics and objectives the product or service is not compatible except where financial instruments consider sustainability factors.’;

(b) paragraph 5 is replaced by the following:

‘5. Member States shall require investment firms to review the investment products they offer or recommend and the services they provide on a regular basis, taking into account any event that could materially affect the potential risk to the identified target market. Firms shall assess at least whether the product or service remains consistent with the needs, characteristics and objectives, including any sustainability related objectives, of the identified target market and whether the intended distribution strategy remains appropriate. Firms shall reconsider the target market and/or update the product governance arrangements if they become aware that they have wrongly identified the target market for a specific product or service or that the product or service no longer meets the circumstances of the identified target market, such as where the product becomes illiquid or very volatile due to market changes.’.

*Article 2*

**Transposition**

1. Member States shall adopt and publish, by 21 August 2022 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 22 November 2022.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 3*

**Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 4*

**Addressees**

This Directive is addressed to the Member States.

Done at Brussels, 21 April 2021.

*For the Commission*
*The President*
Ursula VON DER LEYEN