

COMMISSION DELEGATED REGULATION (EU) 2021/1257**of 21 April 2021****amending Delegated Regulations (EU) 2017/2358 and (EU) 2017/2359 as regards the integration of sustainability factors, risks and preferences into the product oversight and governance requirements for insurance undertakings and insurance distributors and into the rules on conduct of business and investment advice for insurance-based investment products****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution ⁽¹⁾, and in particular Article 25(2), Article 28(4) and Article 30(6) 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, 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 Regulation (EU) 2017/2358 ⁽⁵⁾.
- (5) Insurance undertakings and insurance intermediaries manufacturing insurance products should consider sustainability factors in the product approval process of each insurance product and in the other product governance and oversight arrangements for each insurance product that is intended to be distributed to customers seeking insurance products with a sustainability-related profile.

⁽¹⁾ OJ L 26, 2.2.2016, p. 19.

⁽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 Regulation (EU) 2017/2358 of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to product oversight and governance requirements for insurance undertakings and insurance distributors (OJ L 341, 20.12.2017, p. 1).

- (6) Considering that the target market should be set at a sufficient granular level, a general statement that an insurance product has a sustainability-related profile should not be sufficient. It should rather be specified by the insurance undertaking or insurance intermediary manufacturing the insurance product to which group of customers with specific sustainability-related objectives the insurance product is supposed to be distributed.
- (7) To ensure that insurance products with sustainability factors remain easily available also for customers that do not have sustainability preferences, insurance undertakings and insurance intermediaries manufacturing insurance products should not be required to identify groups of customers with whose needs, characteristics and objectives an insurance product with sustainability factors is not compatible.
- (8) The sustainability factors of an insurance product should be presented in a transparent manner to enable insurance distributors to provide the relevant information to their customers or potential customers.
- (9) The impact assessment underpinning subsequent legislative initiatives published in May 2018 ⁽⁶⁾ demonstrated the need to clarify that sustainability factors should be taken into account by insurance intermediaries and insurance undertakings distributing insurance-based investment products as part of their duties toward their customers and potential customers.
- (10) To maintain a high standard of investor protection, insurance intermediaries and insurance undertakings distributing insurance-based investment products should, when identifying the types of conflicts of interest the existence of which may damage the interests of a customer or potential customer, include those types of conflicts of interest that stem from the integration of a customer's sustainability preferences. For existing customers, for whom a suitability assessment has already been undertaken, insurance intermediaries and insurance undertakings should have the possibility to identify the customer's individual sustainability preferences at the next regular update of the existing suitability assessment.
- (11) Insurance intermediaries and insurance undertakings that provide advice on insurance-based investment products should be able to recommend suitable insurance-based investment products to their customers or potential customers and should therefore be able to ask questions to identify a customer's individual sustainability preferences. In accordance with the obligation to carry out distribution activities in accordance with the best interest of customers, recommendations to customers or potential customers should reflect both the financial objectives and any sustainability preferences expressed by those customers. It is therefore necessary to clarify that the inclusion of sustainability factors in the advisory process must not lead to mis-selling practices or to the misrepresentation of insurance-based investment products as fulfilling sustainability preferences where they do not. In order to avoid such practices or misrepresentations, insurance intermediaries and insurance undertakings providing advice on insurance-based investment products should first assess a customer's or potential customer's other investment objectives and individual circumstances, before asking for his or her potential sustainability preferences.
- (12) Insurance-based investment products with various degrees of sustainability-related ambition have been developed so far. To enable customers or potential customers to understand the different degrees of sustainability and take informed investment decisions in terms of sustainability, insurance intermediaries and insurance undertakings distributing insurance-based investment products should explain the distinction between, on the one hand, insurance-based investment products that pursue, fully or in part, sustainable investments in economic activities that qualify as environmentally sustainable under Regulation (EU) 2020/852 of the European Parliament and of the Council ⁽⁷⁾, sustainable investments as defined in Article 2, point (17), of Regulation (EU) 2019/2088 of the European Parliament and of the Council ⁽⁸⁾ and insurance-based investment products that consider principal adverse impacts on sustainability factors that might be eligible for recommendation as meeting individual sustainability preferences of customers, and, on the other hand, other insurance-based investment products without those specific features that should not be eligible for recommendation to customers or potential customers that have individual sustainability preferences.

⁽⁶⁾ SWD(2018) 264 final.

⁽⁷⁾ 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 (OJ L 198, 22.6.2020, p. 13).

⁽⁸⁾ 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).

- (13) It is necessary to address concerns about ‘greenwashing’, that is, in particular, the practice of gaining an unfair competitive advantage by recommending an insurance-based investment product as environmentally friendly or sustainable, when in fact that insurance-based investment product does not meet basic environmental or other sustainability-related standards. In order to prevent mis-selling and greenwashing, insurance intermediaries and insurance undertakings distributing insurance-based investment products should not recommend insurance-based investment products as meeting individual sustainability preferences where those products do not meet those preferences. Insurance intermediaries and insurance undertakings distributing insurance-based investment products should explain to their customers or potential customers the reasons for not doing so and keep records of those reasons.
- (14) It is necessary to clarify that insurance-based investment products that are not eligible for individual sustainability preferences can still be recommended by insurance intermediaries and insurance undertakings distributing insurance-based investment products, but not as meeting individual sustainability preferences. In order to allow for further recommendations to customers or potential customers, where insurance-based investment products do not meet a customer’s sustainability preferences, the customer should have the possibility to adapt information on his or her sustainability preferences. In order to prevent mis-selling and greenwashing, insurance intermediaries and insurance undertakings distributing insurance-based investment products should keep records of the customer’s decision along with the customer’s explanation supporting the adaptation.
- (15) The provisions of this Regulation are closely linked with each other and with the provisions of Regulation (EU) 2019/2088 since they establish a comprehensive system of disclosure of sustainability aspects. To allow for a coherent interpretation and application of these provisions and to make sure that market participants and competent authorities as well as investors are provided with a comprehensive understanding and easy access to them, it is desirable to include them in a single legal act.
- (16) Commission Delegated Regulations (EU) 2017/2358 and (EU) 2017/2359 (*) should therefore be amended accordingly.
- (17) Competent authorities, insurance intermediaries and insurance undertakings should be given sufficient time to adapt to the new requirements contained in this Regulation. Its application should therefore be deferred,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2017/2358

Delegated Regulation (EU) 2017/2358 is amended as follows:

- (1) in Article 4(3), point (a), point (i) is replaced by the following:

‘(i) it takes into account the objectives, interests and characteristics of customers, including any sustainability-related objectives;’;

- (2) Articles 5 and 6 are replaced by the following:

‘Article 5

Target market

1. The product approval process shall for each insurance product identify the target market and the group of compatible customers. The target market shall be identified at a sufficiently granular level, taking into account the characteristics, risk profile, complexity and nature of the insurance product, as well as its sustainability factors as defined in Article 2, point (24), of Regulation (EU) 2019/2088 of the European Parliament and of the Council (*).

(*) Commission Delegated Regulation (EU) 2017/2359 of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products (OJ L 341, 20.12.2017, p. 8).

2. Manufacturers may, in particular with regard to insurance-based investment products, identify groups of customers for whose needs, characteristics and objectives the insurance product is generally not compatible, except where insurance products consider sustainability factors as referred to in paragraph 1.

3. Manufacturers shall only design and market insurance products that are compatible with the needs, characteristics and objectives, including any sustainability-related objectives, of the customers belonging to the target market. When assessing whether an insurance product is compatible with a target market, manufacturers shall take into account the level of information available to the customers belonging to that target market and their financial literacy.

4. Manufacturers shall ensure that staff involved in designing and manufacturing insurance products has the necessary skills, knowledge and expertise to properly understand the insurance products sold and the interests, objectives, including any sustainability-related objectives, and characteristics of the customers belonging to the target market.

Article 6

Product testing

1. Manufacturers shall test their insurance products appropriately, including scenario analyses where relevant, before bringing that product to the market or significantly adapting it, or in case the target market has significantly changed. That product testing shall assess whether the insurance product over its lifetime meets the identified needs, objectives, including any sustainability-related objectives, and characteristics of the customers belonging to the target market. Manufacturers shall test their insurance products in a qualitative manner and, depending on the type and nature of the insurance product and the related risk of detriment to customers, quantitative manner.

2. Manufacturers shall not bring insurance products to the market if the results of the product testing show that the products do not meet the identified needs, objectives, including any sustainability-related objectives, and characteristics of the target market.

(*) 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).;

(3) in Article 7, paragraph 1 is replaced by the following:

'1. Manufacturers shall continuously monitor and regularly review insurance products they have brought to the market, to identify events that could materially affect the main features, the risk coverage or the guarantees of those products. They shall assess whether the insurance products remain consistent with the needs, characteristics and objectives, including any sustainability-related objectives, of the identified target market and whether those products are distributed to the target market or are reaching customers outside the target market.;

(4) in Article 8, paragraph 3 is replaced by the following:

'3. The information referred to in paragraph 2 shall enable the insurance distributors to:

- (a) understand the insurance products;
- (b) comprehend the identified target market for the insurance products;
- (c) identify any customers for whom the insurance product is not compatible with their needs, characteristics and objectives, including any sustainability-related objectives;
- (d) carry out distribution activities for the relevant insurance products in accordance with the best interests of their customers as prescribed in Article 17(1) of Directive (EU) 2016/97.;

(5) in Article 10, paragraph 2 is replaced by the following:

'2. The product distribution arrangements shall:

- (a) aim to prevent and mitigate customer detriment;

- (b) support a proper management of conflicts of interest;
 - (c) ensure that the objectives, interests and characteristics of customers, including any sustainability-related objectives, are duly taken into account.;
- (6) Article 11 is replaced by the following:

Article 11

Informing the manufacturer

Insurance distributors becoming aware that an insurance product is not in line with the interests, objectives and characteristics of the customers belonging to its identified target market, including any sustainability-related objectives, or becoming aware of other product-related circumstances that may adversely affect the customer, shall promptly inform the manufacturer and, where appropriate, amend their distribution strategy for that insurance product.;

Article 2

Amendments to Delegated Regulation (EU) 2017/2359

Delegated Regulation (EU) 2017/2359 is amended as follows:

- (1) in Article 2, the following points (4) and (5) are added:

- (4) “sustainability preferences” means a customer’s or potential customer’s choice as to whether and, if so, to what extent, one or more of the following financial products should be integrated into his or her investment:
- (a) an insurance-based investment product for which the customer or potential customer 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 (*);
 - (b) an insurance-based investment product for which the customer or potential customer 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 (**);
 - (c) an insurance-based investment product that considers principal adverse impacts on sustainability factors where qualitative or quantitative elements demonstrating that consideration are determined by the customer or potential customer;
- (5) “sustainability factors” means sustainability factors as defined in Article 2, point (24), of Regulation (EU) 2019/2088.

(*) 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 (OJ L 198, 22.6.2020, p. 13).

(**) 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) in Article 3, paragraph 1 is replaced by the following:

‘1. For the purposes of identifying, in accordance with Article 28 of Directive (EU) 2016/97, the types of conflicts of interest that arise in the course of carrying out any insurance distribution activities related to insurance-based investment products and which entail a risk of damage to the interests of a customer, including his or her sustainability preferences, insurance intermediaries and insurance undertakings shall assess whether they, a relevant person or any person directly or indirectly linked to them by control, have an interest in the outcome of the insurance distribution activities, which meets the following criteria:

- (a) it is distinct from the customer’s or potential customer’s interest in the outcome of the insurance distribution activities;

- (b) it has the potential to influence the outcome of the distribution activities to the detriment of the customer.

Insurance intermediaries and insurance undertakings shall proceed in the same way for the purposes of identifying conflicts of interest between one customer and another.;

- (3) Article 9 is amended as follows:

- (a) in paragraph 2, point (a) is replaced by the following:

‘(a) it meets the investment objectives of the customer or potential customer in question, including that person’s risk tolerance and any sustainability preferences;’;

- (b) paragraph 4 is replaced by the following:

‘4. The information regarding the investment objectives of the customer or potential customer shall include, where relevant, information on the length of time for which the customer or potential customer wishes to hold the investment, his or her preferences regarding risk taking, the risk profile, the purposes of the investment and, in addition, his or her sustainability preferences. The level of information gathered shall be appropriate to the specific type of product or service being considered.’;

- (c) paragraph 6 is replaced by the following:

‘6. When providing advice on an insurance-based investment product in accordance with Article 30(1) of Directive (EU) 2016/97, an insurance intermediary or insurance undertaking shall not make a recommendation where none of the products are suitable for the customer or potential customer.

An insurance intermediary or insurance undertaking shall not recommend insurance-based investment products as meeting a customer’s or potential customer’s sustainability preferences where those insurance-based investment products do not meet those preferences. The insurance intermediary or insurance undertaking shall explain to the customers or potential customers the reasons for not doing so and keep records of those reasons.

Where no insurance-based investment product meets the sustainability preferences of the customer or potential customer, and the customer decides to adapt his or her sustainability preferences, the insurance intermediary or insurance undertaking shall keep records of the decision of the customer, including the reasons for that decision’;

- (4) Article 14 is amended as follows:

- (a) in paragraph 1, point (b), point (i) is replaced by the following:

‘(i) the customer’s investment objectives, including that person’s risk tolerance, and whether the customer’s investment objectives are achieved by taking into account his or her sustainability preferences;’;

- (b) in paragraph 4, the following subparagraph is added:

‘The requirements to meet the sustainability preferences of customers or potential customers, where relevant, shall not alter the conditions laid down in the first subparagraph.’.

Article 3

Entry into force and application

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

It shall apply from 2 August 2022.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 21 April 2021.

For the Commission
The President
Ursula VON DER LEYEN
