UPDATE

Sustainable Finance: New EU Delegated Legislation

A wide range of new EU legislative measures on sustainable finance came into force on 22 August 2021.

In total, there are five Commission Delegated Regulations and two Commission Delegated Directives (collectively the "Delegated Acts"). The Delegated Acts seek to integrate sustainability issues and considerations into the following EU legislative regimes:

- UCITS Directive 2009/65/EC
- AIFMD 2011/61/EU
- MiFID II 2014/65/EU
- Solvency II Directive 2009/138/EC
- Insurance Distribution Directive EU/2016/97 ("IDD").

Background

On 21 April 2021, the European Commission (the "Commission") published the draft texts of the Delegated Acts as part of its Sustainable Finance Package[1].

Final versions of the Delegated Acts were published in the EU Official Journal on 2 August 2021.

The Delegated Acts are designed to complement the obligations in Regulation (EU) 2019/2088 ("SFDR") and Regulation (EU) 2020/852 (the "Taxonomy Regulation") and form part of the Commission's 'ambitious and comprehensive' package of measures to help improve the flow of money towards sustainable activities across the EU.

Key Points Summary

UCITS

Commission Delegated Directive (EU) 2021/1270[2] (the "UCITS amending Directive") amends Directive 2010/43/EU and imposes obligations on UCITS management companies to:

- Integrate sustainability risks in the management of UCITS
- Include in their conflicts of interest procedures a consideration of any conflicts that may arise as a result of the integration of sustainability risks
- Take into account sustainability risks as part of the due diligence in the selection and ongoing monitoring of investments
- Capture details of procedures to manage sustainability risks in the risk management policy.

AIFMD

Commission Delegated Regulation (EU) 2021/1255[3] amends Delegated Regulation (EU) 231/2013 and imposes obligations on AIFMs to:

- Integrate sustainability risks in the management of AIFs

[1] https://ec.europa.eu/info/publications/210421-sustainable-finance-communication_en

[2] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021L1270&from=EN

[3] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R1255&from=EN

- Include in their conflicts of interest procedures a consideration of any conflicts that may arise as a result of the integration of sustainability risks

- Take into account (i) sustainability risks and (ii) if relevant, the principal adverse impacts of investment decisions on sustainability factors, as part of the due diligence in the selection and ongoing monitoring of investments

- Capture details of procedures to manage sustainability risks in the risk management policy.

MiFID II

Commission Delegated Regulation (EU) 2021/1253[4] amends Delegated Regulation (EU) 2017/565 and requires investment firms providing financial advice or portfolio management to carry out a mandatory assessment of the sustainability preferences of clients; take this into account in the selection of financial products and prepare client reports explaining how the recommendation meets a client's investment objectives, risk profile, capacity to bear loss and sustainability preferences.

Investments firm will also need to take into account sustainability risks when complying with organisational requirements and to integrate sustainability into risk management policies.

Commission Delegated Directive (EU) 2021/1269[5] amends Delegated Directive (EU) 2017/593 (the "Amending MIFID Product Governance Directive") and will require investment firms manufacturing and distributing financial instruments to consider sustainability factors in the product approval process of each financial instrument and in the 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.

Solvency II and the IDD

Commission Delegated Regulation (EU) 2021/1256[6] amends Delegated Regulation (EU) 2015/35 and supplements Solvency II to introduce the integration of sustainability risks in the governance, conflicts of interest and risk management of insurance and reinsurance undertakings.

Commission Delegated Regulation (EU) 2021/1257[7] amends Delegated Regulations (EU) 2017/2358 and (EU) 2017/2359 on 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.

Timeline

All the Delegated Acts entered into force on 22 August 2021.

The Delegated Regulations will be directly effective from 1 August 2022[8].

Member States have until 31 July 2022 to adopt and apply laws implementing the UCITS Amending Directive.

[4] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R1253&from=EN

[5] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021L1269&from=EN

[6] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R1256&from=EN

[7] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R1257&from=EN

[8] Other than the correcting Delegated Regulation (EU) 2021/1254 relating to MiFID.

Member States have until 22 August 2022 to adopt laws to implement the Amending MIFID Product Governance Directive. Those measures must apply by 22 November 2022.

Further Information

We have produced a guide[9] focusing on sustainable investment fund strategies to help promote environmental, social and governance aims.

Should you have any queries or comments on the implications of the impact of the Commission's Sustainable Action Plan on your business, please feel free to contact any of the team below or your usual Maples Group contact.

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[9] https://maples.com/-/media/files/pdfs/esg/a-guide-to-sustainable-investment-funds.pdf

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