

European Commission

European Commission consultations

- on 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
- amending Delegated Directive (EU) 2017/593 as regards the integration of sustainability factors and preferences into the product governance obligations

FFI's response to the Commission's draft amendments on the integration of sustainability considerations into MiFID II

- The definition of ESG-compliant products should not be narrowed under MiFID. The definition of sustainability preferences should refer to the existing categories of sustainable products in Article 8 and 9 SFDR without adding the further qualifications proposed as sub-points (i) and (ii) of Article 1 (7). It should be possible to take into account the customer's sustainability preferences also in situations where the customer would prefer a product that promotes environmental or social characteristics even if said product would not fulfil the qualifications set out in sub-points (i) and (ii) of Article 1 (7).
- The inclusion of principal adverse impact in SFDR is targeted at the entity rather than the product. Due to that the considerations of product-level principal adverse impact should be deleted.
- The definition of sustainability preferences refers to "*financial instruments*" and not "*financial products*", which is the term used in SFDR. As a result, the rules of the proposed regulation could be interpreted as inclusion of instruments, as defined in section C of the MiFID II Directive, for which issuers or financial market participants do not have obligation to disclose information under SFDR, e.g. bonds and shares. It would also include derivatives and other financial instruments used for the purpose of hedging and not for investment purposes. This will lead to implementation challenges. The proposed wording would be detrimental not only to the investor but also to issuers, since a considerable share of investment opportunities might be impossible to include. It is unclear how the proposed regulation would be applied to derivative contracts, in particular OTC derivatives, if it is possible at all. FFI is seeking clarification from the commission to the definition of suitability preferences. In addition to this, FFI is advocating for exclusion of financial instruments for hedging purposes, especially OTC derivatives, from the proposed regulation and the definition of sustainability preferences.
- It is stated in the recital (5) that "investment firms providing investment advice should first assess the investor's' investment objectives, time horizon and individual circumstances, before asking their clients for their potential sustainability preferences". We understand this so that the potential sustainability preferences should not outweigh the investor's other investment objectives, time horizon and individual circumstances.

- Used terminology should be coherent. In the proposals the terms “any”, “potential” or “his or her” sustainability preferences are used instead of “sustainability preferences”. We advise to use only the term “sustainability preferences” in order to avoid confusion.
- FFI welcomes the implementation period of 12 months in order to have sufficient time to implement the rules after they are finalised. However, it is unclear how this implementation timeframe fits together with the requirements of the sustainability disclosures under Regulation (EU) 2019/2088, which should apply from 3/2021.
- Finance Finland promotes the response given by EBF and Efama on this topic.

Proposed amendments

We propose the following amendments to the draft Commission Delegated Regulation (EU) 2017/565:

Recitals

(6) Sustainable products with various degrees of ambition have been developed so far. To enable clients to better understand those products, investment firms that provide investment advice and portfolio management services should clearly explain the distinction between financial products that promote environmental or social characteristics and financial products that pursue sustainable investment objectives. **Both types of financial products offer added value to clients with different sustainability preferences.** ~~Whilst financial products that pursue sustainable investment objectives guarantee the attainment of certain level of sustainability, financial products that promote environmental or social characteristics do not necessarily achieve that. That is why the identification of the client's sustainability preferences should in case of financial products that promote environmental or social characteristics take into account those financial products that at least to some extent pursue sustainable investment objectives, or consider principal adverse impacts on sustainability factors, as laid down by Regulation (EU) 2019/2088. Since, in accordance with that Regulation, certain manufacturers of financial products should be obliged to provide information on how their financial products consider principal adverse impacts on sustainability factors at the latest as of 30 December 2022, investment firms should be able to increasingly recommend also those products as suitable in terms of clients' sustainability preferences after that day.~~

Article 1

Delegated Regulation (EU) 2017/565 is amended as follows:

(1) in Article 2, the following points (7), (8) and (9) are added:

“(7) ‘sustainability preferences’ means a client’s or potential client’s choice as to whether either of the following financial instruments should be integrated into his or her investment strategy:

(a) a financial instrument that has as its objective sustainable investments as defined in Article 2, point (17), of Regulation (EU) 2019/2088 of the European Parliament and of the Council;

(b) a financial instrument that promotes environmental or social characteristics as referred to in Article 8 of Regulation (EU) 2019/2088;
~~and that either:~~

~~(i) pursues, among others, sustainable investments as defined in Article 2, point (17), of that Regulation; or~~

~~(ii) as of 30 December 2022, considers principal adverse impacts on sustainability factors, as referred to in Article 7(1), point (a), of that Regulation; or~~

Similar amendments need to be made to Article 1(1) of the draft Commission Delegated Directive (EU) 2017/593.

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