



Brussels, **XXX**
[...] (2020) **XXX** draft

COMMISSION DELEGATED REGULATION (EU) .../...

of **XXX**

amending Delegated Regulation (EU) 2017/2358 and Delegated Regulation (EU) 2017/2359 as regards the integration of sustainability factors 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)

This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission.

EXPLANATORY MEMORANDUM

This Regulation is part of a broader Commission's initiative on sustainable development. It lays the foundation for an EU framework which puts sustainability considerations at the heart of the financial system to support transforming Europe's economy into a greener, more resilient and circular system in line with the **European Green Deal**¹ objectives.

Following the adoption of **2016 Paris agreement on climate change** and the **United Nations 2030 Agenda for Sustainable Development Goals (SDGs)**, the Commission announced in the **Action Plan: Financing Sustainable Growth**² the intention to incorporate sustainability when providing financial advice and to clarify the integration of sustainability in so-called fiduciary duties in sectoral legislation. The **European Green Deal** Communication confirms the need for long-term signals to direct financial and capital flows to green investment and to avoid stranded assets. This Delegated Regulation will contribute to this specific objective.

Commission Delegated Regulation (EU) 2017/2358³ supplements Directive (EU) 2016/97⁴ (IDD) by further specifying product oversight and governance requirements for insurance undertakings and insurance distributors, while Commission Delegated Regulation (EU) 2017/2359⁵ supplements Directive (EU) 2016/97 by specifying information requirements and conduct of business rules applicable to the distribution of insurance-based investment products. This Regulation modifies Commissions Delegated Regulations (EU) 2017/2358 and (EU) 2017/2359 in two ways.

First, it integrates sustainability factors in the suitability assessment. Under the existing IDD framework, insurance intermediaries and insurance undertakings distributing insurance-based investment products are required to obtain the necessary information about the customers' knowledge and experience in the investment field, their financial situation including the ability to bear losses and objectives including the customers' risk tolerance to enable the insurance intermediaries and insurance undertakings to recommend the insurance-based investment products that are suitable for the customer (suitability assessment). The information regarding the investment objectives includes information about preferences regarding risk taking, risk profile and the purposes of the investment. However, the information about investment objectives generally relates to financial objectives, while non-

¹ Communication from the Commission to the European Parliament, to the European Council, the Council, the European Economic and Social Committee, and the Committee of the Regions: the European Green Deal (COM(2019)640 final)

² Communication from the Commission to the European Parliament, to the European Council, the Council, The European Central Bank, the European Economic and Social Committee, and the Committee of the Regions Action Plan: Financing Sustainable Growth (COM(2018)097 final).

³ 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).

⁴ Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (OJ L 26, 2.2.2016, p. 19).

⁵ 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).

financial objectives of the customer such as sustainability preferences are usually not addressed. Existing suitability assessments generally do not include questions on sustainability preferences of customers, while the majority of customers would not raise the sustainability issue themselves. As a result, insurance intermediaries and insurance undertakings distributing insurance-based investment products consistently do not give appropriate consideration to sustainability factors in the selection process.

Second, this Regulation integrates sustainability risks into the product oversight and governance requirements and into the rules on conflicts of interest. This part on the sustainability risk is based on technical advice on the integration of sustainability risks and factors in the delegated acts under Solvency II and IDD delivered by the European Insurance and Occupational Pensions Authority (EIOPA)⁶. The technical advice concludes that further clarifications are needed in respect of the integration of sustainability risks and sustainability factors in Commission Delegated Regulations (EU) 2017/2358 and (EU) 2017/2359 and identifies specific provisions in this respect.

This Regulation and other sectoral delegated acts that adapt rules on fiduciary duties and that were adopted alongside also reinforce the **Regulation on sustainability-related disclosures in the financial sector**⁷, the **Regulation on the EU Climate Transition Benchmarks and the EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks**⁸ and Regulation on the **EU taxonomy for sustainable activities**⁹. These rules integrate sustainability considerations into the investment, advisory and disclosure processes in a consistent manner across sectors. They anchor environmental, social and governance (sustainability) considerations at the heart of the financial system to help transform Europe's economy into a greener, low-carbon, more resilient, resource-efficient and circular system.

This Regulation is based on the empowerments set out in Articles 25(2), 28(4) and 30(6) of IDD.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In December 2016, the Commission set up a High-Level Expert Group on Sustainable Finance (HLEG) to help develop an EU strategy on Sustainable Finance through recommendations. The HLEG published an interim report on "Financing a Sustainable European Economy" in mid-July 2017 and presented its final report at a stakeholder event on 18 July 2017, followed by a consultation questionnaire.

A feedback statement was published along with the HLEG final report on Financing a Sustainable European Economy on 31 January 2018. The feedback statement summarises the respondents' answers. In its final report, the HLEG recommends to "*require investment*

⁶ EIOPA-BoS-19/172, 30 April 2019.

⁷ 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).

⁸ Regulation (EU) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks (OJ L 317, 9.12.2019, p. 17).

⁹ Regulation of the European Parliament and of the Council on the establishment of a framework to facilitate sustainable investment (not yet published).

advisers to ask about, and then respond to, retail investors' preferences about the sustainable impact of their investments, as a routine component of financial advice". It also recommended to "discuss the governance of addressing long-term and sustainability risks".

In March 2018, the Commission sent a targeted questionnaire on the integration of sustainability-related (environmental, social and governance) considerations in the suitability assessment. The consultation showed that only a minority of the clients proactively raise sustainability issues during the advisory process. Some of the reasons for this are: i) the available information on sustainable financial products is not transparent; ii) the risk of 'greenwashing' in existing documentation is high; and iii) there is a lack of education on the impact of sustainability factors on risk and performance. Only in rare cases, clients seem to systematically raise sustainability issues during the advisory process.

In addition, a draft Delegated Regulation integrating sustainability aspects into the investment advice for insurance-based investment products was published for feedback in line with the Better Regulation guidelines in the period between 24 May and 21 June 2018. The Commission received feedback from 20 interested parties by means of electronic form by stakeholders from different backgrounds (e.g. NGOs, financial industry associations, public bodies) commented on diverse aspects of the proposed Delegated Regulation. While there was generally strong support to enhance the focus on non-financial objectives within the investment process, some stakeholders were reluctant to change their newly implemented processes based on IDD. As described above, the Commission is not only convinced of the urgency of moving ahead with its Sustainable Finance Agenda but is also of the view that the newly introduced reference to Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector¹⁰ and the proposed timeline for the application of this delegated act (12 months after entry into force) provide for sufficient flexibility.

As regards some of the objectives within the suitability assessment process, the Commission included some modifications in order to allow for the necessary differentiation between investment objectives on the one hand and sustainability preferences on the other hand. This differentiation is important in order to avoid mis-selling, which may happen should a sustainability factor take precedence over a client's personal investment objective. Another recital shall then clarify that the sustainability preferences should only be addressed within the suitability process after the identification of the customer's investment objective.

To enhance legal certainty, the references to sustainable investments were specified and the recitals were amended: it was clarified that a new suitability assessment for existing contracts will generally not be necessary.

As regards the integration of sustainability risks into the organisational requirements, the Commission requested EIOPA to issue technical advice on potential amendments to delegated acts to be adopted under the IDD, with regard to the integration of sustainability risks and sustainability factors.

¹⁰ JO L 317, 09.12.2019, p. 1.

On 30 April 2019, EIOPA issued its Technical Advice on the integration of sustainability risks and factors in the Delegated Acts under Solvency II and IDD. The advice takes into account the views expressed by stakeholders during the public consultation conducted between 28 November 2018 and 28 February 2019. It includes a cost-benefit analysis. The advice addresses the inclusion of sustainability risks and factors in the product oversight and governance requirements and in the rules on conflicts of interest. The recommendations prepared and publicly consulted by EIOPA were integrated into this Delegated Regulation.

On 22 November 2019, the Commission services initiated the consultation of the Member States; the Expert Group of XXXXX was duly consulted.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

In order to take into account environmental, social and governance preferences of customers, when insurance intermediaries and insurance undertakings provide advice on insurance-based investment products, the present Delegated Regulation amends

- Articles 4 and 5 of Delegated Regulation (EU) 2017/2358 as regards the elements to be taken into account when determining the criteria for the design of insurance products and identifying the target market and the group of compatible customers for each insurance product,
- Article 3 of Delegated Regulation (EU) 2017/2359 as regards the interests of the customer to be taken into consideration when identifying the types of conflicts of interest that arise in the course of carrying out insurance distribution activities related to insurance-based investment products,
- Articles 9 and 14 of Delegated Regulation (EU) 2017/2359 as regards the details of the elements to be taken into consideration by insurance intermediaries and insurance undertakings when assessing the suitability of insurance-based investment products for their customers.

Article 1 of the Regulation aims at ensuring that insurance undertakings and insurance intermediaries consider the sustainability profile and preferences of the customers belonging to the target market in the product approval process and the product oversight and governance arrangements if a particular insurance product is intended to be distributed to customers looking for products with a sustainability-related profile.

Article 2 of this Regulation aims at clarifying that insurance intermediaries and insurance undertakings distributing insurance-based investment products have to take into account possible conflicts of interest that may arise in relation to sustainability factors. Furthermore, when providing advice on insurance-based investment products, insurance intermediaries and insurance undertakings have to carry out a mandatory assessment of sustainability preferences of their customers and potential customers. They should take these sustainability preferences into account in the selection process of the insurance-based investment products that are offered to these customers.

Article 3 of this Regulation sets out the date of application of the proposed Regulation, including the transitional period of 12 months.

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(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 distribution¹, 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 Agreement². 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 Deal³ in December 2019. That 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 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. The impact assessment underpinning subsequent legislative initiatives published in May 2018⁵

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. 4).

³ COM(2019) 640 final.

⁴ COM(2018) 97 final.

⁵ SWD(2018) 264 final.

demonstrated the need to clarify that sustainability factors should be taken into account by manufacturers and distributors of insurance products as part of their product oversight and governance arrangements and their conflicts of interest policy. Commission Delegated Regulation (EU) 2017/2358⁶ and Commission Delegated Regulation (EU) 2017/2359⁷ do not explicitly refer to sustainability factors. For that reason and to ensure that internal procedures and organisational arrangements are properly implemented and adhered to, it is necessary to clarify that product oversight and governance arrangements applied by manufacturers and distributors of insurance products and the conflicts of interest policy for the distribution of insurance-based investment products should also include sustainability factors.

- (4) Manufacturers of insurance products should consider sustainability factors in the product approval process of each insurance product and in the other product oversight and governance arrangements for each insurance product that is intended to be distributed to customers seeking insurance products with a sustainability-related profile. Considering that the target market should be defined 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 manufacturers of insurance products to which group of customers with specific sustainability preferences the insurance product is supposed to be distributed.
- (5) 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, include those types of conflicts of interest that stem from the distribution of sustainable insurance-based investment products or from insurance-based investment products that promote environmental or social characteristics. Insurance intermediaries and insurance undertakings should identify any conflict of interest that may arise in relation to sustainability factors and in the course of any distribution activity related to insurance-based investment products, not only in cases where customers have informed them about their sustainability preferences. Insurance intermediaries and insurance undertakings should have appropriate arrangements in place to ensure that the integration of sustainability factors in the advisory process does not lead to mis-selling practices.
- (6) Sustainable products with various degrees of ambition have been developed so far. To enable customers to better understand those products, insurance intermediaries and insurance undertakings distributing insurance-based investment products should clearly explain the distinction between financial products that promote environmental or social characteristics and financial products that pursue sustainable investment objectives. Whilst financial products that pursue sustainable investment objectives guarantee the attainment of a certain level of sustainability, financial products that promote environmental or social characteristics do not necessarily achieve that. That is why the identification of the customer's individual sustainability preferences should

⁶ 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).

⁷ 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).

in case of financial products that promote environmental or social characteristics only 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 of the European Parliament and of the Council⁸. 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.

- (7) 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.
- (8) Delegated Regulations (EU) 2017/2358 and (EU) 2017/2359 should therefore be amended accordingly.
- (9) 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)(a), point (i) is replaced by the following:
 - “(i) it takes into account the objectives, interests and characteristics of customers, including any sustainability preferences as defined in Article 2, point (4), of Commission Delegated Regulation (EU) 2017/2359*;

* 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) 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,

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).

risk profile, complexity and nature of the insurance product, as well as its sustainability factors.

2. Manufacturers may, in particular with regard to insurance-based investment products, identify groups of customers for whose needs, characteristics and objectives, including any sustainability preferences as defined in Article 2, point (4), of Commission Delegated Regulation (EU) 2017/2359, the insurance product is generally not compatible.

3. Manufacturers shall only design and market insurance products that are compatible with the needs, characteristics and objectives, including any sustainability preferences, 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 preferences, 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 preferences, 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 preferences, and characteristics of the target market.”;

(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 preferences, of the identified target market and whether those products are distributed to the target market or is 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 preferences;
 - (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 preferences, 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 the sustainability preferences, 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), (5) and (6) are added:
- “(4) ‘sustainability preferences’ means a customer’s or potential customer’s choice as to whether either of the following financial products should be integrated into his or her investment strategy:
- (a) a financial product 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 product 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 (EU), 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;
- (5) ‘sustainability factors’ means sustainability factors as defined in Article 2, point (24), of Regulation (EU) 2019/2088;

- (6) ‘sustainability risk’ means sustainability risk as defined in Article 2, point (22), of Regulation (EU) 2019/2088.

** 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 his or her sustainability preferences, if any. The level of information gathered shall be appropriate to the specific type of product or service being considered.”;

- (4) in Article 14(1)(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 any of his or her sustainability preferences;”.

Article 3

Entry into force

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 [PO, please insert date 12 months after the date of entry into force].

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

Done at Brussels,

For the Commission
The President
Ursula VON DER LEYEN

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