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Update

ESG (Environment, Social and Governance)



New European rules on sustainability regarding the activity of investment firms

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A. Background

The adoption of the recent regulatory package on Sustainable Finance, approved on 21 April 2021, implied a set of relevant changes to the rules governing the activity of investment firms, in line with the establishment of an ambitious and global strategy on sustainable finance.

In this regard the European Commission has adopted the Commission Delegated Regulation (EU) 2021/1253, of 21 April 2021 (“Delegated Regulation 2021/1253”), amending Commission Delegated Regulation (EU) 2017/565, of 25 April 2016 (MiFID II Level 2 Regulation), thereby integrating sustainability factors, risks and preferences into certain organisational requirements and operating conditions of investment firms.

B. Innovations introduced

The innovations introduced by the new European legislation focus essentially on two vectors: one of an internal nature which corresponds to the inclusion of sustainability factors in the procedures and internal organisation of investment firms; and another of an external nature, focused on the relationship of investment firms with their clients or potential clients.

It is also highlighted the definition undertaken in Delegated Regulation 2021/1253 of the concept of «sustainability preferences».

Among the novelties contained in this new diploma, with potential implications for the internal organisation of investment firms, are the need to consider sustainability risks in the internal control system of investment firms, as well as the requirement to integrate the sustainability preferences of their clients in the identification process of conflicts of interest potentially detrimental to their clients or potential clients. In this context, it should be also highlighted the need to demonstrate, in the policies and procedures of investment firms, how possible sustainability factors of their clients are taken into consideration in the conduct of their business.

With regard to the specific conduct of business of investment firms, they should address any client preferences on sustainability when assessing the suitability of investment services or financial instruments, and these preferences should be included in the information set out in relation to the investment objectives of the client or potential client of the investment firm.

It is also pointed out that investment firms should not recommend or decide to trade financial instruments that do not meet the individual sustainability preferences of their clients or potential clients.

Lastly, and specifically when providing investment advice services, investment firms are obliged to provide the client with a description of the sustainability factors that have been considered in the selection process of financial instruments, as well as to refer to that client's sustainability preferences in the report containing an outline of the advice given to any retail client.

C. Entry into force

According to what is laid down in its Article 2, Delegated Regulation 2021/1253 shall apply from 2 August 2022, leaving less than a year for financial intermediaries to prepare their adaptation to its content.