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Greener, fairer finance

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JULIE WYNNE AND LAURA TSCHERRIG LOOK AT THE IMPLICATIONS OF THE EU SUSTAINABLE FINANCE ACTION PLAN FOR ASSET MANAGERS

Binding and non-binding regulations on sustainable finance are multiplying in the EU, Switzerland and elsewhere. Sustainable finance is generally defined as taking into account environmental, social and corporate governance (ESG) considerations in the investment decision process.

This article aims to give a short overview of some of the most important milestones in the EU's efforts in the field of sustainable finance and their implications for asset managers. These developments are of the utmost importance, even for third-country jurisdictions such as Switzerland, where they have led to various actions, as evidenced notably by the Swiss Federal Council's report and guidelines on sustainable finance in June 2020.[1]

The EU has presented itself as a pioneer and a global leader in the field of sustainable finance by launching a series of political and regulatory measures. Shortly after the conclusion of the Paris Agreement,[2] the EU announced the creation of the High-Level Expert Group on Sustainable Finance, which issued the action plan on financing sustainable growth (the Action Plan), adopted by the European Commission on 7 March 2018, and comprising a series of voluntary and binding measures in the field of sustainable finance.[3] The EU renewed its commitment to further sustainability in the financial markets in its European Green Deal, published in December 2019,[4] aimed at making the EU's economy 'greener' overall.

Among the binding provisions of the Action Plan are:

- amendments to *Commission Delegated Regulation (EU) 2017/565 of 25 April 2016* (the MiFID II Delegated Regulation) and *Commission Delegated Directive (EU) 2017/593 of 7 April 2016* (the MiFID II Delegated Directive) (the MiFID II Delegated Acts), regarding the integration of sustainability considerations into the investment advisory process of investment firms; and
- *Regulation (EU) 2019/2088 of 27 November 2019* on sustainability-related disclosures in the financial services sector (the Regulation).[5]

SUSTAINABILITY CONSIDERATIONS UNDER MIFID II

Under the revised MiFID II Delegated Acts, published in June 2020,[6] investment firms are required to implement a series of organisational changes with the objective of adapting internal processes to reflect sustainability risks, factors and preferences (so-called sustainability considerations), and building technical know-how in this respect, so that these considerations are duly taken into account in the investment and advisory processes. More precisely, under the revised MiFID II Delegated Regulation, investment firms will be legally bound to include sustainability considerations into their assessment of suitability, pursuant to art.54 of the Markets in Financial Instruments Directive II (MiFID II).[7] This is to say that the information about the investment objectives of the client must include, in addition to the usual information such as risk appetite or the duration of the investment, their sustainability preferences, if any (e.g. investment restrictions based on exclusion criteria or the type of sustainable investment products, etc.).

DISCLOSURE DUTIES UNDER THE REGULATION

The Regulation, on the other hand, applicable as of 10 March 2021, requires financial institutions to make public whether they include, and if so how they consider, sustainability risks. It contains binding regulatory measures in terms of disclosure duties aimed at making comparable information available to investors and amends the existing mandatory disclosure duties set forth under several framework legislations, including MiFID II.[8]

In particular, financial market participants and financial advisors are required to 'publish on their websites information about their policies on the integration of sustainability risks' in their investment decision process and investment or insurance advice.[9]

Moreover, the Regulation contains mandatory rules on the pre-contractual disclosure obligations for all products; it covers, namely, the duty to disclose whether investments promote environmental or social characteristics and/or the sustainability impact of investments. This includes the publication of a statement disclosing, if applicable, that no sustainability risks have been deemed relevant for a product.

As a final highlight, the Regulation also includes specific, further-reaching disclosures on websites and in periodic reports for sustainability-focused products, including information on the methodology used to assess, measure and monitor the environmental and social impact of such products.

A FULL INTEGRATION OF SUSTAINABILITY CONSIDERATIONS

The MiFID II Delegated Acts, the Regulation and other developments such as the EU common taxonomy,[10] show that asset managers are bound not only to integrate sustainability considerations in their internal organisation, namely in their risk-management procedures and suitability assessments, but also to make this information public.

Instead of such requirements being seen as an additional and costly regulatory burden, the EU's goal of achieving readily available and comparable information may very well further investors' confidence in sustainable products and support the development of sustainable finance.

#FINANCE AND BANKING
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1 'Swiss Federal Council Adopts Report and Guidelines on Sustainable Finance', 26 June 2020, bit.ly/37FphIN **2** The legally binding global climate change agreement, adopted at the Paris climate conference in December 2015, bit.ly/2K30tC7 **3** *Action Plan: Financing Sustainable Growth*, bit.ly/33RnHCB **4** *The European Green Deal*, bit.ly/3qAnflD. The EU Commission announced that updated action points are to be published in Q4 2020. At the time of writing, they had not yet been published. **5** bit.ly/37XxhVN **6** Draft MiFID II Delegated Acts, as published on 8 June 2020, available at bit.ly/2K1uzpz and bit.ly/33QBo4E **7** *Directive 2014/65/EU* **8** Recital (11) of the Regulation. **9** Article 3 of the Regulation. **10** The EU Technical Expert Group on Sustainable Finance published its *Taxonomy Technical Report* on 18 June 2019 (bit.ly/2VQcPAc) as well as the proposed 'Regulation on the establishment of a framework to facilitate sustainable investment', which is also known as the 'Taxonomy Regulation' (bit.ly/3lLVAL6).


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