

Sustainability preferences in MiFID suitability test applicable soon

As of 2 August 2022, MiFID firms providing discretionary portfolio management services or investment advice must collect information about their clients' and potential clients' sustainability preferences as part of the suitability assessment.

In accordance with [Delegated Regulation 2021/1253](#), which amends MiFID Delegated Regulation 2017/565 regarding organisational requirements and operating conditions for investment firms, for the provision of these services investment firms are required to obtain specific information on their clients' preferences regarding (environmentally) sustainable investments and investments which consider adverse impacts on environment and society. Hence, transactions recommended or entered into in the context of portfolio management services now also have to meet the client's sustainability preferences besides the other parameters of the suitability test, including the client's financial situation, knowledge and experience.

More practical details on how to integrate clients' sustainability preferences in the assessment of the suitability of investment advice and discretionary portfolio management decisions are expected through the revision by ESMA of its Guidelines on certain aspects of the MiFID II suitability requirements. Although the public consultation on the proposed text (see link [here](#)) closed on 27 April 2022, the final text of the guidelines is not yet available, making compliance with the new framework as of the implementation date particularly challenging for the entities concerned.

In-scope entities will also have to take into account the ESG-related changes made to the MiFID II product governance requirements introduced by [Commission Delegated Directive 2021/1269](#). These updated requirements will apply from 22 November 2022, once transposed into national legislation.

For further information on recent EU legal texts and guidance on sustainable finance, please read our article in the Asset Management section of this Newsletter [here](#).

For any further information please contact us or visit our website at www.elvingerhoss.lu.

The information contained herein is not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific legal advice concerning particular situations.

We undertake no responsibility to notify any change in law or practice after the date of this newsletter.