

23 May 2022

Amendments to the Investment Services Rulebooks to Transpose and Implement EU Directives, Regulations and EBA Guidelines

1. Introduction

The purpose of this Circular is to communicate several amendments that have been made to the Investment Services Rulebooks in order to:

- transpose [Commission Delegated Directive \(EU\) 2021/1270](#) amending Directive 2010/43/EU as regards the sustainability risks and sustainability factors to be taken into account for UCITS ('ESG-UCITS Delegated Directive');
- implement [Commission Delegated Regulation \(EU\) 2021/1255](#) amending the AIFMR as regards the sustainability risks and sustainability factors to be taken into account by AIFMs ('ESG-AIFM Delegated Regulation');
- implement [Commission Delegated Regulation \(EU\) 2021/1253](#) as regards the integration of sustainability factors, risks and preferences into certain organisational requirements and operating conditions for investment firms ('ESG-MiFID Delegated Regulation');
- transpose [Directive \(EU\) 2021/2261](#) of the European Parliament and of the Council of 15 December 2021 amending Directive 2009/65/EC as regards the use of key information documents by management companies of undertakings for collective investment in transferable securities ('KIDS-UCITS Directive');
- correct the references to the repealed [Directive 2007/44/EC](#) of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector ('Acquisitions Directive'); and
- include references to EBA Guidelines on [internal governance](#) and [sound remuneration policies](#), applicable to investment firms.

2. Transposition of ESG-UCITS Delegated Directive

The ESG UCITS Delegated Directive amends Directive 2010/43/EU and imposes obligations on UCITS management companies and self-managed UCITS to:

- integrate sustainability risks in the management of UCITS;
- include in their procedures on conflicts of interest a consideration of any conflicts that may arise as a result of the integration of sustainability risks;
- take into account sustainability risks as part of the due diligence process in the selection and ongoing monitoring of investment; and
- capture details of procedures to manage sustainability risks in the risk management policy.

This Delegated Directive is applicable as from **1 August 2022**. A detailed outline of the changes made as a result of the Delegated Directive is found in **Annex A** to this Circular.

3. Implementation of ESG-AIFM Delegated Regulation

The ESG AIFM Delegated Regulation amends Delegated Regulation (EU) 231/2013 and imposes obligations on AIFMs and self-managed AIFs to:

- integrate sustainability risks in the management of AIFs;
- include in their conflicts of interest procedures a consideration of any conflicts that may arise as a result of the integration of sustainability risks;
- take into account (i) sustainability risks and (ii) if relevant, the principal adverse impacts of investment decisions on sustainability factors, as part of the due diligence in the selection and ongoing monitoring of investments; and
- capture details of procedures to manage sustainability risks in the risk management policy.

This Delegated Regulation is directly applicable as from **1 August 2022**. A detailed outline of the changes made as a result of the Delegated Regulation is found in **Annex B** to this Circular.

4. Implementation of ESG-MiFID Delegated Regulation

The ESG MiFID Delegated Regulation amends Delegated Regulation (EU) 2017/565 and requires investment firms providing financial advice or portfolio management to:

- carry out a mandatory assessment of the sustainability preferences of clients;
- take this into account in the selection of financial products and prepare client reports explaining how the recommendation meets a client's investment objectives, risk profile, capacity to bear loss and sustainability preferences; and

- take into account sustainability risks when complying with organisational requirements and to integrate sustainability into risk management policies.

This Delegated Regulation is directly applicable as from **2 August 2022**. A detailed outline of the changes made as a result of the Delegated Regulation is found in **Annex C** to this Circular.

5. Transposition of KIDS-UCITS Directive

According to the UCITS Directive (Directive 2009/65/EC), each undertaking must provide key investor information. The PRIIPS KID Regulation (Regulation (EU) No 1286/2014) requires manufacturers of Packaged Retail and Insurance-based Investment Products (PRIIPs) to draw up and publish a Key Information Document (KID) for that product.

UCITS qualify as PRIIPs but an exemption was laid out for stakeholders advising on, or selling, units of UCITS until 31 December 2021 and further delayed until 31 December 2022.

In order to avoid conflict between requirements, it became necessary to ensure that retail investors in PRIIPs interested in acquiring units of UCITS do not receive both documents for the same financial product after the expiry of the transitional arrangement. In addition, for non-retail investors, investment companies and management companies should continue to draw up key investor information in accordance with the UCITS Directive, unless they decide to draw up a KID as set out in Regulation (EU) No 1286/2014.

This Delegated Directive is applicable as from **1 January 2023**. A detailed outline of the changes made as a result of the Delegated Directive is found in **Annex D** to this Circular.

6. Reference to Acquisitions Directive

The Acquisitions Directive in 2009, harmonised the supervisory approval requirements present in various sectoral legislation. The Directive itself has since been repealed and therefore sub-paragraph (a) of Rule R13-13.1.2 in Part A of the Investment Services Rules for Investment Services Licence Holders has been removed to delete reference to the Acquisitions Directive.

7. EBA Guidelines

On 15 March 2022, the EBA published translations in all EU official languages of the [Guidelines on internal governance for investment firms](#) and [Guidelines on sound remuneration policies](#) under the Investment Firms Directive (Directive (EU) 2019/2034). The Investment Firm Rulebook has been updated to make reference to these Guidelines.

A detailed outline of the changes made as a result of the Guidelines is found in **Annex E** to this Circular.

8. Conclusion

The revised Rulebooks enter into force on the day following the publication of this circular.

Licence holders are encouraged to gather the necessary information and adjust their practices to apply the specific requirements by the applicable timeframes.

Should you have any queries on the contents of this circular, please contact the Investment Services Supervision Function on isspolicy@mfsa.mt.