



STATUTORY INSTRUMENTS.

S.I. No. 363 of 2022

EUROPEAN UNION (MARKETS IN FINANCIAL INSTRUMENTS)
(AMENDMENT) (NO. 3) REGULATIONS 2022

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I, PASCHAL DONOHOE, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving effect to Commission Delegated Directive (EU) 2021/1269 of 21 April 2021¹, amending Commission Delegated Directive (EU) 2017/593 of 7 April 2016², hereby make the following regulations:

Citation and commencement

1. (1) These Regulations may be cited as the European Union (Markets in Financial Instruments) (Amendment) (No. 3) Regulations 2022.

(2) These Regulations shall come into operation on 22 November 2022.

Definition

2. In these Regulations, “Principal Regulations” means the European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017).

Amendment of Regulation 3 of Principal Regulations

3. Regulation 3(1) of the Principal Regulations is amended by the insertion of the following definition:

“ ‘sustainability factors’ means sustainability factors as defined in Article 2(24) of Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019³;”.

Amendment of Schedule 4 to Principal Regulations

4. Schedule 4 to the Principal Regulations is amended -

(a) in paragraph 1 —

(i) by the substitution of the following for subparagraph 10:

“(10) Investment firms shall identify at a sufficiently granular level the potential target market for each financial instrument and specify the type or types of client with whose needs, characteristics and objectives, including any sustainability related

¹ OJ No. L 277, 02.08.2021, p. 137.

² OJ No. L 87, 31.03.2017, p. 500.

³ OJ No. L 317, 09.12.2019, p. 1.

objectives, the financial instrument is compatible. As part of this process, investment firms shall identify any group or groups of clients with whose needs, characteristics and objectives the financial instrument is not compatible, except where financial instruments consider sustainability factors. Where investment firms collaborate to devise or otherwise create a financial instrument, only one target market needs to be identified.”,

(ii) by the substitution of the following for subparagraph 13:

“(13) Investment firms shall determine whether a financial instrument meets the identified needs, characteristics and objectives of the target market, including by examining the following elements:

- (a) the financial instrument’s risk/reward profile is consistent with the target market;
- (b) the financial instrument’s sustainability factors, where relevant, are consistent with the target market;
- (c) the financial instrument design is driven by features that benefit the client and not by a business model that relies on poor client outcomes to be profitable.”,

(iii) by the insertion of the following subparagraph after subparagraph 15:

“(15A) Investment firms shall present the sustainability factors of the financial instrument in a transparent manner and provide distributors with the relevant information to duly consider any sustainability related objectives of the client or potential client.”, and

(iv) by the substitution of the following for subparagraph 16:

“(16) Investment firms shall review the financial instruments they devise or otherwise create on a regular basis, taking into account any event that could materially affect the potential risk to the identified target market. Investment firms shall consider whether the financial instrument remains consistent with the needs, characteristics and objectives, including any sustainability related objectives, of the target market and if it is distributed to the target market, or reaches clients with whose needs, characteristics and objectives the financial instrument is not compatible.”,

and

(b) in paragraph 2 —

(i) by the substitution of the following for subparagraph 4:

“(4) Investment firms shall put in place adequate product governance arrangements to ensure that products and services they intend to offer or recommend are compatible with the needs, characteristics, and objectives, including any sustainability related objectives, of an identified target market and that the intended distribution strategy is consistent with the identified target market. Investment firms shall appropriately identify and assess the circumstances and needs of the clients they intend to focus on, so as to ensure that clients’ interests are not compromised as a result of commercial or funding pressures. As part of this process, investment firms shall identify any group of clients with whose needs, characteristics and objectives the product or service is not compatible except where financial instruments consider sustainability factors.”, and

(ii) by the substitution of the following for subparagraph 10:

“(10) Investment firms shall review the investment products they offer or recommend and the services they provide on a regular basis, taking into account any event that could materially affect the potential risk to the identified target market. Investment firms shall assess at least whether the product or service remains consistent with the needs, characteristics and objectives, including any sustainability related objectives, of the identified target market and whether the intended distribution strategy remains appropriate. Investment firms shall reconsider the target market or update the product governance arrangements (or do both) if they become aware that they have wrongly identified the target market for a specific product or service or that the product or service no longer meets the circumstances of the identified target market, such as where the product becomes illiquid or very volatile due to market changes.”.



GIVEN under my Official Seal,
15 July, 2022.

PASCHAL DONOHOE,
Minister for Finance.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations amend the European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No.375 of 2017) to provide for the integration of sustainability factors into product governance obligations, as required by Commission Delegated Directive (EU) 2021/1269 of 21 April 2021, amending Commission Delegated Directive (EU) 2017/593 of 7 April 2016.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
BÓTHAR BHAILE UÍ BHEOLÁIN,
CILL MHAIGHNEANN,
BAILE ÁTHA CLIATH 8,
D08 XAO6

Tel: 046 942 3100
r-phost: publications@opw.ie

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