SSF Website Content on Regulation

The following information is available on the SSF website under the following link: https://www.sustainablefinance.ch/en/resources/regulation-3087.html

This section on regulation provides a high-level overview on Sustainable finance regulation in Switzerland and the EU. It does not claim to be comprehensive and does not represent legal or tax advice.

Version dated 14 March 2023

Content:

I. Switzerland

A. Code of Obligations

Following the rejection of the "Responsible Business Initiative" by Swiss voters, Parliament adopted an indirect counterproposal. These new provisions of the indirect counterproposal were part of the revision of the Company law anchored in the Code of obligations (CO). They provide non-financial reporting obligations (Art. 964*a*-964*c* CO) as well as due diligence and transparency obligations in the areas of conflict minerals and child labour (Art. 964*j*-964*l* CO). The new Art. 964a et seq. CO entered into force on 1 January 2022 and apply as of business year 2023.

1. Non-financial reporting obligations (Art. 964*a* et seq. CO)

a. Scope of application (large companies)

Companies of public interests must publish a report on non-financial matters each year if – in two successive financial years and together with all Swiss or foreign companies controlled by them - they have at least 500 full-time position (annual average) and 2) exceed at least one of the following two thresholds: a balance sheet total of 20 million CHF or sales revenues of 40 million CHF.

Companies are of public interests if in particular they have equity securities listed on a stock exchange, have bonds outstanding or require a license, recognition, authorisation or registration from FINMA (e.g. banks, insurers).

Companies fulfilling these requirements are exempt from the non-financial reporting obligations if they are controlled by a company that 1) falls within the scope of application or 2) must prepare an equivalent report under foreign law.

b. Content of the non-financial report (Art. 964*b* CO)

The report on non-financial matters must cover **environmental matters, in particular the CO2 goals, social issues, employee-related issues, respect for human rights and combating corruption**. It has to cover the information needed to understand the business performance, the business result, the state of the undertaking and the effects of its activity on these non-financial matters.

c. Ordinance on Climate Disclosures

Regarding the reporting obligations on non-financial matters required by the CO, **the Federal Council specified the requirements for climate disclosure** and adopted on 23 November 2022 the Ordinance on Climate Disclosures. Large companies that base their report on the "Recommendations of the Task Force on Climate-related Financial Disclosure" (TCFD-recommendations) and the annex "Implementing the Recommendations of the Task Force on Climate-related Financial Disclosures", version of October 2021 and cover the topics of governance, strategy, risk management as well as key figures and targets, will be assumed to be compliant with the climate reporting obligations in accordance with Art. 964*b* para. 1 CO.

If a company does not make disclosures on climate issues in accordance with the TNFD-recommendations it must a) demonstrate that it complies in other ways with the climate disclosure obligation in accordance with Article 964b para. 1 CO as regards climate issues; or b) clearly declare that it does not follow any climate concept and justify this decision.

The Ordinance on Climate Disclosures will enter into force on 1 January 2024.

d. Links

CO https://www.fedlex.admin.ch/eli/cc/27/317_321_377/en

Ordinance on Climate Disclosures https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-91859.html

2. Due Diligence and Transparency Obligations in Relation to Minerals and Metals from Conflict-Affected Areas and Child Labour (Art. 964*j* et seq. CO)

a. Scope of application

Undertakings whose seat, head office or principal place of business is located in Switzerland must comply with obligations of due diligence in the supply chain and report thereon if:

1) they place in free circulation or process in Switzerland minerals containing tin, tantalum, tungsten or gold or metals from conflict-affected and high-risk areas; or

2) they offer products or services in relation to which there is a reasonable suspicion that they have been manufactured or provided using child labour.

b. Due diligence obligations

Undertakings in scope must comply with an ongoing due diligence process. They must maintain a management system and particularly define a supply chain policy as well as a supply chain traceability system (see Art. 964*k* CO).

c. Reporting obligations

Each year a report on compliance with the due diligence obligations must be published.

d. Ordinance on Due Diligence and Transparency in Relation to Minerals and Metals from Conflict-Affected Areas and Child Labour of 3 December 2021 (DDTrO)

The Ordinance regulates the due diligence and reporting obligations to be complied with by companies under Articles 964*j*–964*l* CO. In particular it provides for definitions, the scope of application of due diligence and reporting obligations in relation to minerals, metals and child labour (including exemptions and exceptions) as well as requirements concerning the due diligence management system, the risk management audit and consolidated reporting. Undertakings that adhere to internationally recognised equivalent regulations are exempt from the due diligence and reporting obligations (see Annex 2 DDTrO). The DDTrO came into force on 1 January 2022.

e. Links

CO https://www.fedlex.admin.ch/eli/cc/27/317_321_377/en

DDTrO https://www.fedlex.admin.ch/eli/cc/2021/847/en

B. FINMA

The Swiss Financial Market Supervisory Authority FINMA amended the following Circulars and published the following Guidances:

1. FINMA Circular 2016/01 "Disclosure – banks", FINMA Circular 2016/02 "Disclosure-insurers" and Guidance 01/2023

FINMA specified transparency obligations for climate risks in FINMA Circular 2016/01 "Disclosure – banks" and FINMA Circular 2016/02 "Disclosure-insurers". The revised circulars entered into force on 1 July 2021. The disclosures had to be made for the first time in the annual report/financial condition report relating to financial year 2021.

Banks and insurers of supervisory categories 1 and 2 must disclose information related to the management of climate-related financial risks annually as part of their annual reporting/ financial condition report. The disclosure must include, at a minimum, the following information:

1) Governance: The main features of the governance structure at the bank/insurance company to enable it to identify, assess, manage, monitor, and report on climate-related financial risks;
2) Strategy: Description of short-, medium-, and long-term climate-related financial risks and their impact on the bank's/insurance company's business and risk strategy, and any effect on existing risk categories;
3) Risk management: Risk management structures and processes in place to identify, evaluate and manage climate-related financial risks; and
4) Quantitative information (targets and key data) on climate-related financial risks including the methodology used.

Banks and insurers must disclose the criteria and assessment methodologies used to assess the materiality of climate-related financial risks.

In **Guidance 01/2023 Developments with regard to the management of climate risks of 24 January 2023**, FINMA draws attention to relevant developments in the area of climate-related financial risk management. FINMA reiterates its expectation that supervised institutions establish an appropriate climate risk management framework based on recognised practices.

Links

FINMA Circular 2016/01:

https://www.finma.ch/en/~/media/finma/dokumente/dokumentencenter/myfinma/rundschreiben/finma-rs-2016-01.pdf?sc_lang=en&hash=D411DB5EE94E16A385AA2A689D94AF94

FINMA Circular 2016/02:

https://www.finma.ch/en/~/media/finma/dokumente/dokumentencenter/myfinma/rundschreiben/finma-rs-2016-02-20210506.pdf?sc_lang=en&hash=1FD2028AA8E5CC7BE4FCC83C11ECC737

FINMA Guidance 01/2023:

https://www.finma.ch/en/~/media/finma/dokumente/dokumentencenter/myfinma/4dokumentation/finma-aufsichtsmitteilungen/20230124-finma-aufsichtsmitteilung-01-2023.pdf?sc_lang=en&hash=AE5AC34C3A564F4CF9FBD08557A3D124

2. FINMA Guidance 05/2021: Preventing and combating greenwashing of 3 November 2021

In this guidance, FINMA sets out the following expectations and current practice regarding the management of sustainability-related collective investment schemes at fund and institutional level to ensure investor protection (Art. 12 para. 1 of the Collective Investment Schemes Act, CISA):

- *Sustainability-related collective investment schemes*: Fund documents must contain appropriate information for investors to make an informed investment decision and reporting on sustainability-related collective investment schemes for investors must contain "a high degree of transparency".
- Suitable *organisational* structure at the institutional level for managing sustainability-related collective investment schemes.

Link:

https://www.finma.ch/en/~/media/finma/dokumente/dokumentencenter/myfinma/4dokumentation/finma-aufsichtsmitteilungen/20211103-finma-aufsichtsmitteilung-05-2021.pdf?sc_lang=en&hash=7F911020E829EA5910FF903AF851B2F3

C. Swiss finance associations

This section provides a high-level overview on voluntary self-regulation or guidelines (not recognised by FINMA as a minimum standard) and recommendations published by Swiss finance associations as Swiss Sustainable Finance (SSF), the Asset Management Association Switzerland (AMAS), Swissbanking (SBA), and Association Suisse des Institutions de Prévoyance pour une prévoyance professionnelle solide (ASIP).

1. SSF

a. Practitioners' Guide of SSF/EY on the Integration of Sustainability Preferences into the Advisory Process for Private Clients of 5 July 2022

These non-binding recommendations address financial institutions that advise **private clients**. Within the financial institution, they are relevant for many different functions, especially client advisors and any client facing staff (e.g. specialist advisors) and staff in support functions (e.g. training specialists) as well as any other function working on designing, upgrading and implementing the client advisory process. The guide is categorised into five key areas linked to the client advisory process:

1) Client onboarding process,

2) Knowledgeable client advisors as a prerequisite for complying with information duties towards clients,

3) Ensuring that clients suitability preferences are matched with the financial instrument as well as service offering,

4) Regular monitoring of product compliance and performance, as well as

5) Frequency and content of client reporting.

Link:

https://www.sustainablefinance.ch/upload/cms/user/2022_07_05_SSF_Practitioners_Guide_SI_in_Client_Avisory_single_pages.pdf

b. How to avoid the Greenwashing Trap: Recommendations of AMAS and SSF on transparency and minimum requirements for sustainable investment approaches and products of December 2021

These joint AMAS/SSF recommendations are directed at the asset management industry with the intention to build a bridge between asset managers, other financial service providers and end investors. It focuses on the products designed by the fund and asset management industry and sold by financial service providers to investors. The non-binding recommendations have three main goals:

1) Define the various sustainable investment approaches and instruments in more detail and set minimum criteria for the implementation of each of them.

2) Specify minimum requirements for investor information on the different investment approaches and instruments.

3) Identify which of these sustainable investment approaches satisfy the three main sustainable investor goals (financial performance, value alignment, positive change) most effectively.

These recommendations also aim at supporting the "points of sale" and distribution, ensuring a financial advisor has access to all relevant information in order to recommend the most suitable sustainable product to a client.

Links:

EN:https://www.sustainablefinance.ch/upload/cms/user/RecommendationsforSustainableInvestmentProducts_AMAS_SSF.pdf

DE:https://www.sustainablefinance.ch/upload/cms/user/Empfehlungen-fuer-nachhaltige-Anlageansaetze-und-Produkte_AMAS_SSF_2022-02-14-150829.pdf

FR:https://www.sustainablefinance.ch/upload/cms/user/Recommandations-sur-la-transparence-et-les-criteres-minimaux-applicables-aux-approches-dInvestissement-durable-et-aux-produits_2022-02-14-150833.pdf

c. Sustainable Asset Management: Key Messages and Recommendation of AMAS and SSF of 16 June 2020

With this document, SSF and AMAS drew up detailed recommendations for the Swiss asset management industry on how to implement sustainable practices effectively. The recommendations and associated core messages are intended to actively help asset managers incorporate sustainability criteria into their investment processes (governance, investment policy and strategy, strategic and tactical asset allocation, sustainability approaches, monitoring, risk management, transparency and reporting).

Links:

EN:https://www.sustainablefinance.ch/upload/cms/user/EN_2020_06_16_SFAMA_SSF_key_messages_and_recommendations_final.pdf

DE:https://www.sustainablefinance.ch/upload/cms/user/DE_2020_06_16_SFAMA_SSF_key_messages_and_recommendations_final.pdf

FR:https://www.sustainablefinance.ch/upload/cms/user/FR_2020_06_16_SFAMA_SSF_key_messages_and_recommendations_final.pdf

IT:https://www.sustainablefinance.ch/upload/cms/user/IT_2020-06-16_SFAMA_SSF_keymessagesandrecommendations_final.pdf

2. AMAS

a. Self-regulation on Transparency and Disclosure for Sustainability-related Collective Assets of 26 September 2022

Institutions that produce and manage sustainable financial products are subject to organizational, reporting and disclosure obligations at institutional and product levels. These obligations are binding for members of AMAS. They come into force on 30 September 2023 with a transitional period until 30 September 2024 for the submission of the adapted fund regulations and prospectuses to FINMA. This self-regulation is not recognized by FINMA as a minimum standard.

Link:

https://www.am-switzerland.ch/en/regulierung/selbstregulierung-standard/sustainable-finance

b. **AMAS Circular 04/2022 Environmental Indicator for Real Estate Funds**

Together with Swiss Sustainable Finance (SSF), AMAS published key messages and recommendations on sustainable asset management in 2020, followed by recommendations on transparency and minimum requirements for sustainable investment approaches and products in 2021 (see section SSF below). In view of these developments AMAS published the environmental indicators for real estate funds by Circular 04/2022. The environmental indicators are part of the voluntary self-regulation on sustainability of AMAS. They are set out in a separate section of the specialist information factsheet on the key figures of real estate funds and explained in detail in the appendix of Circular 04/2022.

Links:

AMAS Circular 04/2022 https://www.am-switzerland.ch/en/regulierung/selbstregulierung-standard/immobilienfonds

3. SBA

a. **Guidelines for financial service providers on the integration of ESG preferences and ESG risks into investment advice and portfolio management of June 2022**

The guidelines build on the on the conduct rules of the Financial Services Act (FinSA) and clarify the consideration of ESG criteria **at the point of sale (investment advice and portfolio management)**. They are binding for financial service providers which are SBA members. The guidelines entered into force on 1 January 2023 (for transitional periods see Art. 18 of the Guidelines). They are not recognized by FINMA as a minimum standard.

Link:

https://www.swissbanking.ch/_Resources/Persistent/a/5/e/0/a5e0845f065a60699df88910ae675b7082e69411/SBA_Guidelines_investment_advice_and_portfolio_management_EN.pdf

b. **Guidelines for mortgage providers on the promotion of energy efficiency of June 2022**

The guidelines relate to the provision of **advisory services to private individuals by mortgage providers in regard to the financing of owner-occupied real estate**. They set out some mandatory content that must be discussed with customers during the consultation. The guidelines entered into force on 1 January 2023 (for transition periods see Art. 7 Guidelines). They are not recognized by FINMA as a minimum standard.

Link:

https://www.swissbanking.ch/_Resources/Persistent/c/b/b/3/cbb3619179bd238dca41328b2464af560a2c0f3a/SBA_Guidelines_mortgage_providers_on_the_promotion_of_energy_efficiency_EN.pdf

4. ASIP

a. ESG Guidance for Swiss Pension Funds of July 2022

In July 2022, ASIP published a practical guide for pension funds on how to consider ESG criteria in their investment decisions.

Links:

https://www.asip.ch/media/filer_public/30/ec/30ec7b97-8107-4e65-b3e9-55a4b528102b/asip_esg-wegleitung.pdf

https://www.asip.ch/de/verband/standpunkte/ (see "Standpunkt 3")

b. ESG Reporting: Standards for Pension Funds of 13 December 2022 (Recommendations)

These non-binding recommendations have the objective to increase transparency of pension funds on how they implement ESG criteria into their investment process. The ESG reporting standard includes qualitative and quantitative disclosure recommendations. They entered into force on 1 January 2023.

Link

https://www.asip.ch/de/verband/standpunkte/ (see "Standpunkt 3")

II. European Union

This section provides a rough overview of the key Sustainable Finance regulation of the EU at the regulation/directive level. It does not claim to be comprehensive and does not represent legal or tax advice.

1. Taxonomy

In summary, the Taxonomy Regulation (Regulation (EU) 2020/852) is one of the most important legal frameworks the EU is relying on to achieve the objectives of the European Green Deal. It introduces a classification system to define environmentally sustainable economic activities to create a common understanding of sustainability. The Taxonomy Regulation (TR) applies to financial market participants who make available financial products (defined by the SFRD) and to issuers of corporate bonds as well as to undertakings in scope of the Corporate Social Responsibility Directive (CSRD). It entered into force on 12 July 2020.

An economic activity is considered environmentally sustainable if it contributes to at least one of the following six environmental objectives:

1) climate change mitigation,
2) climate change adaptation,
3) sustainable use and protection of water and marine resources,
4) transition to a circular economy,
5) pollution prevention and control, and
6) protection and restoration of biodiversity and ecosystems.

In addition, an economic activity that meets at least one of the six environmental objectives must

a) not significantly harm any of the six objectives (DNSH), see Art. 17 TR
b) fulfil certain safeguards (e.g. OECD Guidelines for Multinational Enterprises and UN Guiding Principles on Business and Human Rights
c) comply with technical screening criteria (Delegated Acts)

The Climate Delegated Act (CDA) defines technical screening criteria (TSC) for economic activities that contribute to the first two environmental objectives (climate change mitigation and adaption). It entered into force on 29 December 2021. In addition, the Complementary Climate Delegated Act (CCDA) entered into force in July 2022 and became applicable on January 2023. It amends the CDA and includes nuclear energy and natural gas as transitional activities.

The Platform on Sustainable Finance (PSF), a permanent expert group of the EU-Commission, published a report on TSC for the four remaining non-climate-related environmental objectives in August 2021. In March 2022, the PSF published a second and final report. The final TSC have not yet been published by the EU-Commission.

The TR also provides disclosure requirements for products and entities (Art. 5-8 TR). Art. 8 TR sets out additional disclosure obligation for entities which are already required to include a non-financial statement in their management report under the Non-Financial Reporting Directive (NFRD). The Article 8 Disclosure Delegated Act (2021/2178; applicable from January 2022) specifies the Key Performance Indicators (KPIs) to be used by non-financial and financial undertakings to fulfil their disclosure obligations under Art. 8 TR.

2. SFDR

The regulation 2019/2088 on Sustainability-Related Disclosures in the Financial Services Sectors (SFDR) has become applicable step-by-step, starting from 10 March 2021. It applies to financial market participants (FMP) and financial advisors. The regulation has the objective to create harmonized rules on the transparency expected from FMP and financial advisors. They must specify sustainability-related information on websites, in pre-contractual documentation and in periodic reports at entity and product level.

The website disclosures must inform about sustainability risk policies, adverse sustainability impacts at entity level and remuneration policies in relation to the integration of sustainability risks (Art. 3-5). It must also disclose Article 8 and 9 products (Transparency of the promotion of environmental or social characteristics and of sustainable investments, Art. 10).

Art. 6-9 SFDR set out the disclosure requirements for pre-contractual documentation regarding the integration of sustainability risks (Art. 6), the principle adverse impact at financial product level (Art. 7), the promotion of environmental or social characteristics of financial products (Art. 8) and sustainable investments (Art. 9). Products without any sustainability feature have to update their pre-contractual disclosures to explain why sustainability risks are not relevant to them (Art. 6).

Periodic reports must disclose information on financial products that promote environmental or social characteristics as well as sustainable investments (Art. 11).

On 6 April 2022, the EU Commission published its proposed Level 2 requirements for the implementation of the SFDR in the form of regulatory technical standards (RTS) to implement the Level 1 measures which have been applicable since 10 March 2021 (see also drafts submitted by ESAs' [European Banking Authority, European Securities and Markets Authority, and European Insurance and Occupational Pensions Authority] in February and October 2021). The RTS contain detailed implementation rules for the pre-contractual and periodic disclosures of Article 8 and 9 products and include five annexes, which provide mandatory disclosure templates. They must be used by FMPs as annexes to their reporting documents.

The RTS also aim to establish a single rulebook for sustainability disclosures under the SFDR and the Taxonomy Regulation. Therefore, the SFDR's product-level disclosures must be supplemented with information that satisfies the requirements of Art. 5 and 6 TR. The products which target sustainable investments contributing to environmental objectives must identify in their pre-contractual and periodic disclosures which environmental objective the product contributes to, as well as the extent to which the economic activities the product invests in are aligned with the taxonomy.

The SFDR RTS has not yet entered into force.

3. CSRD

The Corporate Social Responsibility Directive CSRD (Delegated Regulation(EU) 2022/2564) entered into force on 5 January 2023. It replaces the Non-Financial Reporting Directive (NFRD). The CSRD applies to all companies and/or groups that are based in the EU, regardless of the origin or domicile of the parent company.

a. Scope of application

- Large undertakings with balance sheets exceeding two of the following criteria:
  > 250 employees during the financial year
  > €40M net turnover
  > €20M balance sheet

- Listed medium-sized undertakings with annual balance sheets that do not exceed two of the following criteria:
  < 250 employees during the financial year
  < €40M net turnover
  < €20M balance sheet

- Listed small undertakings: Listed small undertakings with annual balance sheets that do not exceed two of the following criteria:
  < 50 employees during the financial year
  < €8M net turnover
  < €4M balance sheet

- Excluded from scope of application: Undertakings that meet one of the following criteria:
  < 10 employees during the financial year
  < €20M net turnover

- Examples of exemption:
  - Subsidiaries (entities controlled by a parent undertaking) if the consolidated management report of their parent undertaking includes these subsidiaries.
  - Non-EU parent companies with multiple EU subsidiaries that are in scope of application of CSRD until 2030. However, the largest EU subsidiary of the non-EU parent company must submit a sustainability report that includes all EU subsidiaries (in scope of application of the CSRD) of the non-EU parent company.

b. Summary of information to be disclosed

- Double materiality perspective: companies must report about how sustainability issues affect their business and their own impact on people and the environment.
- Sustainability information must cover environmental, social and governance factors (e.g. environmental factors: climate change mitigation, climate change adaptation, water and marine resources, resource use and circular economy, pollution, biodiversity and ecosystems; social factors: equal treatment and opportunities, working conditions, respect for human rights; governance factors: role and composition of the company's administratives, management and supervisory bodies, information about incentive schemes offered to members of the administrative, business ethics, risk management system, management and quality of relationships with customers, suppliers and communities).

c. Timeline for the reporting obligations

The timeline of application for the reporting obligation depends on the company size as well as its net turnover and total assets. At the end of the timeline companies based in the EU have to report even on the activities of the non EU-parent (e.g. Swiss parent company) if some complementary conditions are fulfilled.

- From 2025 reporting obligation for large public-interested companies based in the EU with more than 500 employees.

- From 2026 reporting obligation for all other large companies based in the EU meeting at least two of the following: > 250 employees, > €40M in net turnover, > €20M in total assets.
- From 2027/ 2028 reporting obligation for listed SME's based in the EU and certain small and non-complex credit institutions and captive insurers, meeting at least two of the following: > 10 employees (annual average), > €2M net turnover, > €2M in total assets. For listed SME's there is an option to opt out until 2029.
- From 2029/2030 the EU-based subsidiary/branch of the non-EU parents with substantial activities in the EU report for the complete group. A non-EU parent company (e.g. based in Switzerland) becomes subject to the CSRD if it generated net turnover > €150M in the EU for each of the last consecutive years and has at least one subsidiary meeting general scoping of the CSRD or a physical presence (branch) that generated a net turnover > €40M in the preceding year.

d. Compliance with ESRS

Companies in scope of the CSRD are required to report in compliance with the European sustainability reporting standards (ESRS). They are being developed by the European Financial Reporting Advisory Group (EFRAG) and the Global Reporting Initiative (GRI) and provide twelve standards with detailed requirements for corporate ESG reporting.

e. Audit and European Single Access point

The CSRD introduces a general EU-wide external audit requirement for reported sustainability information to ensure that reported information is accurate and reliable. It also requires companies to digitally 'tag' the reported information, so it is machine readable and feeds into the future European single access point (ESAP) for public financial and sustainability-related information about EU companies and EU investment products.

f. Link with the SFDR and Taxonomy Regulation

- To fulfil their own SFDR reporting obligation, financial market participants need the information that companies in scope of the CSRD have to report.
- The Art. 8 Taxonomy Delegated Act provides level 2 measures under the Taxonomy Regulation. It specifies the KPIs for financial undertakings and sets outs detailed rules on the content, methodology and presentation of the KPIs. Companies subject to the CSRD must disclose key figures based on the taxonomy in their CSRD report.

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4. AIFMD, UCITS, Solvency II, IDD and MiFID II

a. Background

To harmonise sustainability-related disclosure requirements, the EU amended AIFMD, UCITS, Solvency II, IDD and MiFID 2. The new measures integrated sustainability risks and factors into the existing directives. Most of these amendments started to be applicable from August 2022. The measures under MiFID II applied from August 2022 (sustainability risks and factors, sustainability preferences) respectively 22 November 2022 (product governance obligations).

b. Key changes requiring the integration of sustainability risks and factors

- Organisational structure: embed a consideration of sustainability risks in the existing governance and organisational structure (including risk management process).
- Identification of conflicts of interests (which may arise from the integration of sustainability or a client's sustainability preferences): update existing conflict registers, policies and processes to take account of conflicts relating to sustainability.
- Due diligence processes when making investment decisions (UCITS, AIFMD): update the investment processes to take account of sustainability risks.
- Suitability assessment (MiFID II): change investment advisory and management process to ensure that they properly reflect a client's sustainability preferences.
- Product governance: update the product origination and marketing/ distribution strategies to ensure that they take account of the sustainability preferences of the target market.

c. MiFID II

i. Sustainability preferences :

The MiFID II (Delegated Regulation (EU) 2021/1253 amending Delegated Regulation (EU) 2017/565) requires inter alia financial advisers to gather the client sustainability preferences during the suitability assessment (for retail and professional clients).
Sustainability preferences are a client's or potential client's choice as to whether and, if so, to what extent, one or more of the following financial instruments will be integrated into their investment:

1) A financial instrument for which the client or potential client determines that a minimum proportion shall be invested in environmentally sustainable investments as defined in the EU Taxonomy Regulation.
2) A financial instrument for which the client or potential client determines that a minimum proportion shall be invested in sustainable investments as defined in the SFDR (article 2(17)).
3) A financial instrument that considers principal adverse impacts (PAIs) on sustainability factors where qualitative or quantitative elements demonstrating that consideration are determined by the client or potential client.

ii. Product governance obligations

Delegated Directive 2021/1269 (amending Delegated Directive 2017/593) introduces the following product obligations for distributors:

1) Products and services must be compatible with the sustainability preferences of the target market.
2) Review of products by investment firms to assess consistency with the target market's sustainability preferences