COMMISSION DELEGATED REGULATION (EU) 2021/1256

of 21 April 2021

amending Delegated Regulation (EU) 2015/35 as regards the integration of sustainability risks in the governance of insurance and reinsurance undertakings

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/138/EC of the European Parliament and the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) ([1]), and in particular Article 50(1) and Article 135(1), point (a), thereof,

Whereas:

(1) The transition to a low-carbon, more sustainable, resource-efficient and circular economy in line with the Sustainable Development Goals is key to ensuring the long-term competitiveness of the economy of the Union. In 2016, the Union concluded the Paris Agreement ([2]). Article 2(1), point (c), of the Paris Agreement sets out the objective of strengthening the response to climate change by, among others, making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.

(2) Recognising that challenge, the Commission presented the European Green Deal ([3]) in December 2019. That Green Deal represents a new growth strategy that aims to transform the Union into a fair and prosperous society, with a modern, resource-efficient and competitive economy where there are no net greenhouse gas emissions in 2050 and where economic growth is decoupled from resource use. This also requires offering clear, long-term signals to guide investors, to avoid stranded assets and to raise sustainable finance.

(3) In March 2018, the Commission published its Action Plan 'Financing Sustainable Growth' ([4]), setting up an ambitious and comprehensive strategy on sustainable finance. One of the objectives set out in that Action Plan is to reorient capital flows towards sustainable investment to achieve sustainable and inclusive growth. The impact assessment underpinning subsequent legislative initiatives published in May 2018 ([5]) demonstrated the need to clarify that sustainability factors should be taken into account by insurance and reinsurance undertakings as part of their duties towards policyholders. Insurance and reinsurance undertakings should therefore assess not only all relevant financial risks on an ongoing basis, but also all relevant sustainability risks as referred to in Regulation (EU) 2019/2088 of the European Parliament and of the Council ([6]) that, where they occur, could cause an actual or potential material negative impact on the value of an investment or a liability. Commission Delegated Regulation (EU) 2015/35 ([7]) does not explicitly refer to sustainability risks. For that reason and to ensure that the system of governance is properly implemented and adhered to, it is necessary to clarify that the system of governance of insurance and reinsurance undertakings and the assessment of those undertakings' overall solvency needs should reflect sustainability risks.

(4) Insurance undertakings that disclose principal adverse impacts on sustainability factors in accordance with Regulation (EU) 2019/2088 should also adapt their processes, systems and internal controls with respect to those disclosures.

([1]) OJ L 335, 17.12.2009, p. 1.

([2]) Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (OJ L 282, 19.10.2016, p. 1).

([3]) Communication from the Commission to the European Parliament, to the European Council, the Council, the European Economic and Social Committee, and the Committee of the Regions: the European Green Deal (COM(2019)640 final).

([4]) COM(2018) 97 final.

([5]) SWD(2018) 264 final.

([6]) Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).

([7]) Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.1.2015, p. 1).

(5) Given the ambitions of the Commission to ensure that climate and environmental risk are managed and integrated into the financial system and the importance of remuneration policies in ensuring that the staff of insurance and reinsurance undertakings effectively manage risks identified by the risk management system, the remuneration policies of insurance and reinsurance undertakings should contain information on how those policies take into account the integration of sustainability risks in the risk management system.

(6) The prudent person principle laid down in Article 132 of Directive 2009/138/EC requires that insurance and reinsurance undertakings only invest in assets the risks of which they can identify, measure, monitor, manage, control and report properly. In order to ensure that climate and environmental risks are effectively managed by insurance and reinsurance undertakings, the implementation of the prudent person principle should take into account sustainability risks and insurance and reinsurance undertakings should reflect in their investment process the sustainability preferences of their customers as taken into account in the product approval process.

(7) Delegated Regulation (EU) 2015/35 should therefore be amended accordingly.

(8) Supervisory authorities and insurance and reinsurance undertakings should be given sufficient time to adapt to the new requirements contained in this Regulation. Its application should therefore be deferred,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2015/35

Delegated Regulation (EU) 2015/35 is amended as follows:

(1) in Article 1, the following points 55c to 55e are inserted:

‘55c. “sustainability risk” means an environmental, social or governance event or condition that, if it occurs, could cause an actual or a potential negative impact on the value of the investment or on the value of the liability;

55d. “sustainability factors” means sustainability factors as defined in Article 2, point (24), of Regulation (EU) 2019/2088 of the European Parliament and of the Council (*);

55e. “sustainability preferences” means a customer’s or potential customer’s choice as to whether and, if so, to what extent, one or more of the following financial instruments should be integrated into his or her investment:

(a) a financial instrument for which the customer or potential customer determines that a minimum proportion shall be invested in environmentally sustainable investments as defined in Article 2, point (1), of Regulation (EU) 2020/852 of the European Parliament and of the Council (**);

(b) a financial instrument for which the customer or potential customer determines that a minimum proportion shall be invested in sustainable investments as defined in Article 2, point (17), of Regulation (EU) 2019/2088;

(c) a financial instrument that considers principal adverse impacts on sustainability factors where qualitative or quantitative elements demonstrating that consideration are determined by the customer or potential customer;

(*) Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).

(**) Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).’;

(2) Article 260 is amended as follows:

(a) in paragraph 1, point (a), point (i) is replaced by the following:

‘(i) actions to be taken by the insurance or reinsurance undertaking to assess and manage the risk of loss or of adverse change in the values of insurance and reinsurance liabilities, resulting from inadequate pricing and provisioning assumptions due to internal or external factors, including sustainability risks;’;

(b) in paragraph 1, point (c), the following point (vi) is added:

‘(vi) actions to be taken by the insurance or reinsurance undertaking to ensure that sustainability risks relating to the investment portfolio are properly identified, assessed and managed.’;

(c) the following paragraph 1a is inserted:

‘1a. The insurance and reinsurance undertakings shall integrate in their policies referred to in points (a) and (c) of paragraph 1, and where relevant, policies on the other areas referred to in paragraph 1, sustainability risks.’;

(3) Article 269 is amended as follows:

(a) in paragraph 1, point (e) is replaced by the following:

‘(e) identifying and assessing emerging risks and sustainability risks.’;

(b) the following paragraph 1a is inserted:

‘1a. Emerging risks and sustainability risks as referred to in paragraph 1, point (e), and identified by the risk management function shall form part of the risks referred to in Article 262(1), point (a).’;

(4) in Article 272(6), point (b) is replaced by the following:

‘(b) the effect of inflation, legal risk, sustainability risks, change in the composition of the undertaking’s portfolio, and of systems which adjust the premiums policy-holders pay upwards or downwards depending on their claims history (bonus-malus systems) or similar systems, implemented in specific homogeneous risk groups;’;

(5) in Article 275, the following paragraph 4 is added:

‘4. The remuneration policy shall include information on how it takes into account the integration of sustainability risks in the risk management system.’;

(6) in Chapter IX of Title I, the following Section 6 is added:

‘*SECTION 6*

Investments

Article 275a

Integration of sustainability risks in the prudent person principle

1. When identifying, measuring, monitoring, managing, controlling, reporting and assessing risks arising from investments, as referred to in the first subparagraph of Article 132(2) of Directive 2009/138/EC, insurance and reinsurance undertakings shall take into account sustainability risks.

2. For the purpose of paragraph 1, insurance and reinsurance undertakings shall take into account the potential long-term impact of their investment strategy and decisions on sustainability factors and, where relevant, that strategy and those decisions of an insurance undertaking shall reflect the sustainability preferences of its customers taken into account in the product approval process referred to in Article 4 of Commission Delegated Regulation (EU) 2017/2358 (*).

(*) Commission Delegated Regulation (EU) 2017/2358 of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to product oversight and governance requirements for insurance undertakings and insurance distributors (OJ L 341, 20.12.2017, p. 1).’.

Article 2

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 2 August 2022.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 21 April 2021.

For the Commission

The President

Ursula VON DER LEYEN