

# Oversigt over de nye ESG-regler i MiFID II

| Artikel  | Nuværende tekst i MiFID II<br>(Commission Delegated Regulation (EU) 2017/565)  | Foreslåede ændringer   |
|--|--|--|
| <p><b>Artikel 2 – Definitioner</b></p> <p>Definitioner af bæredygtighedspræferencer, bæredygtighedsfaktorer og bæredygtighedsrisici tilføjes til artiklen.</p> |  | <p>(7) 'sustainability preferences' means a client's or potential client's choice as to whether either of the following financial instruments should be integrated into his or her investment strategy: (a) a financial instrument that has as its objective sustainable investments as defined in Article 2, point (17), of Regulation (EU) 2019/2088 of the European Parliament and of the Council*; (b) a financial instrument that promotes environmental or social characteristics as referred to in Article 8 of Regulation (EU) 2019/2088 and that either: (i) pursues, among others, sustainable investments as defined in Article 2, point (17), of that Regulation; or (ii) as of 30 December 2022, considers principal adverse impacts on sustainability factors, as referred to in Article 7(1), point (a), of that Regulation; or</p> <p>(8) 'sustainability factors' means sustainability factors as defined in Article 2, point (24), of Regulation (EU) 2019/2088;</p> <p>(9) 'sustainability risks' means sustainability risks as defined in Article 2, point (22), of Regulation (EU) 2019/2088.</p> |
| <p><b>Artikel 21 paragraf 1 – Generelle organisatoriske krav</b></p>   | <p>1. Investment firms shall comply with the following organisational requirements:</p> <p>[...]</p> <p>When complying with the requirements set out in the this paragraph, investment firms shall take into account the nature, scale and complexity of the business of the firm, and the nature and range of investment services and activities undertaken in the course of that business.</p> | <p>1. Investment firms shall comply with the following organisational requirements:</p> <p>[...]</p> <p><b>Investment firms shall take into account sustainability risks when complying with the requirements set out in this paragraph.</b></p> <p>When complying with the requirements set out in this paragraph, investment firms shall take into account the nature, scale and complexity of the business of the firm, and the nature and range of investment services and activities undertaken in the course of that business.</p>   |
| <p><b>Artikel 23 paragraf 1 – Risikostyring</b></p>  | <p>1. Investment firms shall take the following actions relating to risk management:</p> <p>(a) establish, implement and maintain adequate risk management policies and procedures which identify the risks relating to the firm's activities, processes and systems, and where appropriate, set the level of risk tolerated by the firm;</p> <p>[...]</p>                                       | <p>1. Investment firms shall take the following actions relating to risk management:</p> <p>a) establish, implement and maintain adequate risk management policies and procedures which identify the risks relating to the firm's activities, processes and systems, and, where appropriate, set the level of risk tolerated by the firm. <b>In doing so, investment firms shall take into account sustainability risks;</b></p> <p>[...]</p>  |

|   |  |  |
|---|--|--|
| <p><b>Artikel 33</b><br/>– <b>Interessekonflikter, som potentielt skader en kunde</b></p> | <p>For the purposes of identifying the types of conflict of interest that arise in the course of providing investment and ancillary services or a combination thereof and whose existence may damage the interests of a client, investment firms shall take into account, by way of minimum criteria, whether the investment firm or a relevant person, or a person directly or indirectly linked by control to the firm, is in any of the following situations, whether as a result of providing investment or ancillary services or investment activities or otherwise:</p> <p>[...]</p>   | <p>For the purposes of identifying the types of conflict of interest that arise in the course of providing investment and ancillary services or a combination thereof and whose existence may damage the interests of a client, <b>including his or her sustainability preferences</b>, investment firms shall take into account, by way of minimum criteria, whether the investment firm or a relevant person, or a person directly or indirectly linked by control to the firm, is in any of the following situations, whether as a result of providing investment or ancillary services or investment activities or otherwise:</p> <p>[...]</p>   |
| <p><b>Artikel 52 paragraf 3</b><br/>– <b>Oplysninger om investeringsrådgivning</b></p>    | <p>3. Investment firms shall provide a description of the types of financial instruments considered, the range of financial instruments and providers analysed per each type of instrument according to the scope of the service, and, when providing independent advice, how the service provided satisfies the conditions for the provision of investment advice on an independent basis and the factors taken into consideration in the selection process used by the investment firm to recommend financial instruments, such as risks, costs and complexity of the financial instruments.</p>   | <p>3. Investment firms shall provide a description of:</p> <p>(a) the types of financial instruments considered<br/>(b) the range of financial instruments and providers, analysed per each type of instrument according to the scope of the service;<br/>(c) when providing independent advice, how the service provided satisfies the conditions for the provision of investment advice on an independent basis;<br/>(d) the factors taken into consideration in the selection process used by the investment firm to recommend financial instruments, including risks, costs and complexity of the financial instruments, <b>including any sustainability factors.</b></p>  |
| <p><b>Artikel 54 paragraf 2</b><br/>– <b>Egnethedsvurdering og egnethedsrapporter</b></p> | <p>2. Investment firms shall determine the extent of the information to be collected from clients in light of all the features of the investment advice or portfolio management services to be provided to those clients. Investment firms shall obtain from clients or potential clients such information as is necessary for the firm to understand the essential facts about the client and to have a reasonable basis for determining, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of providing a portfolio management service, satisfies the following criteria:</p> <p>(a) it meets the investment objectives of the client in question, including client's risk tolerance;</p> <p>[...]</p> | <p>2. Investment firms shall determine the extent of the information to be collected from clients in light of all the features of the investment advice or portfolio management services to be provided to those clients. Investment firms shall obtain from clients or potential clients such information as is necessary for the firm to understand the essential facts about the client and to have a reasonable basis for determining, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of providing a portfolio management service, satisfies the following criteria:</p> <p>(a) it meets the investment objectives of the client in question, including the client's risk tolerance <b>and any sustainability preferences;</b></p> <p>[...]</p> |
| <p><b>Artikel 54 paragraf 5</b><br/>– <b>Egnethedsvurdering og egnethedsrapporter</b></p> | <p>5. The information regarding the investment objectives of the client or potential client shall include, where relevant, information on the length of time for which the client wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.</p>  | <p>5. The information about the investment objectives of the client or potential client shall include, where relevant, information about the length of time for which the client wishes to hold the investment, his or her preferences regarding risk taking, his <b>or her risk tolerance</b>, the purpose of the investment <b>and his or her sustainability preferences, if any.</b></p>  |
| <p><b>Artikel 54 paragraf 9</b><br/>– <b>Egnethedsvurdering og egnethedsrapporter</b></p> | <p>9. Investment firms shall have, and be able to demonstrate, adequate policies and procedures in place to ensure that they understand the nature, features, including costs and risks of investment services and financial instruments selected for their</p>  | <p>9. Investment firms shall have in place, and be able to demonstrate that they have in place, adequate policies and procedures to ensure that they understand the nature, features, including costs, risks of investment services, and financial instruments selected for their clients, <b>including</b></p>  |

|   |   |  |
|---|---|--|
|   | clients and that they assess, while taking into account cost and complexity, whether equivalent investment services or financial instruments can meet their client's profile.   | <b>any sustainability factors</b> , and that they shall assess, while taking into account cost and complexity, whether equivalent investment services or financial instruments can meet their client's profile.  |
| <b>Artikel 54 paragraf 12 (første underparagraf) – Egnethedsvurdering og egnhedsrapporter</b> | <p>12. When providing investment advice, investment firms shall provide a report to the retail client that includes an outline of the advice given and how the recommendation provided is suitable for the retail client, including how it meets the client's objectives and personal circumstances with reference to the investment term required, client's knowledge and experience and client's attitude to risk and capacity for loss.</p> <p>[...]</p> | <p>12. When providing investment advice, investment firms shall provide a report to the retail client that includes an outline of the advice given and explains how the recommendation provided is suitable for the retail client, including how the recommendation meets the client's investment objectives, his or her personal circumstances with reference to the investment term required, the client's knowledge and experience, the client's attitude to risk, his or her capacity to sustain losses <b>and his or her sustainability preferences.</b></p> <p>[...]</p> |

| Artikel  | Nuværende tekst i MiFID II<br>(Commission Delegated Directive (EU) 2017/593)   | Foreslåede ændringer  |
|--|--|---|
| <p><b>Artikel 1</b><br/><b>– Anvendelsesområde og definitioner</b></p> <p>Definitioner af bæredygtighedspræferencer og bæredygtighedsfaktorer tilføjes til artiklen.</p> |  | <p>5. 'sustainability preferences' means a client's or potential client's choice as to whether either of the following financial instruments should be integrated into his or her investment strategy:</p> <ul style="list-style-type: none"> <li>· a financial instrument that has as its objective sustainable investments as defined in Article 2, point (17), of Regulation (EU) 2019/2088 of the European Parliament and of the Council*;</li> <li>· a financial instrument that promotes environmental or social characteristics as referred to in Article 8 of Regulation (EU) 2019/2088 and that either: <ul style="list-style-type: none"> <li>(i) pursues, among others, sustainable investments as defined in Article 2, point (17), of that Regulation; or</li> <li>(ii) as of 30 December 2022, considers principal adverse impacts on sustainability factors, as referred to in Article 7(1), point (a), of that Regulation;</li> </ul> </li> </ul> <p>6. sustainability factors' means sustainability factors as defined in Article 2, point (24), of Regulation (EU) 2019/2088.</p> <p>*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).</p> |
| <p><b>Artikel 9 paragraf 9 (første underparagraf)</b><br/><b>– Produktstyringsforpligtelser for investeringselskaber, der konstruerer finansielle instrumenter</b></p>   | <p>9. Member States shall require investment firms to identify at a sufficiently granular level the potential target market for each financial instrument and specify the type(s) of client for whose needs, characteristics and objectives the financial instrument is compatible. As part of this process, the firm shall identify any group(s) of clients for whose needs, characteristics and objectives the financial instrument is not compatible. Where investment firms collaborate to manufacture a financial instrument, only one target market needs to be identified.</p> <p>[...]</p> | <p>9. Member States shall require investment firms to identify at a sufficiently granular level the potential target market for each financial instrument and specify the type(s) of client for whose needs, characteristics and objectives, <b>including any sustainability preferences</b>, the financial instrument is compatible. As part of this process, the firm shall identify any group(s) of clients for whose needs, characteristics and objectives the financial instrument is not compatible. Where investment firms collaborate to manufacture a financial instrument, only one target market needs to be identified.</p> <p>[...]</p>  |
| <p><b>Artikel 9 paragraf 11</b><br/><b>– Produktstyringsforpligtelser for investeringselskaber, der konstruerer finansielle instrumenter</b></p>                         | <p>Member States shall require investment firms to 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; and (b) 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.</p>   | <p>11. Member States shall require investment firms to 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>(b) the financial instrument's sustainability factors are consistent with the target market;</b> (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.</p>  |

|  |   |   |
|--|---|---|
| <p><b>Artikel 9 paragraf 14</b><br/>– <b>Produktstyringsforpligtelser for investeringselskaber, der konstruerer finansielle instrumenter</b></p> | <p>14. Member States shall require investment firms to review the financial instruments they manufacture on a regular basis, taking into account any event that could materially affect the potential risk to the identified target market.</p> <p>Investment firms shall consider if the financial instrument remains consistent with the needs, characteristics and objectives of the target market and if it is being distributed to the target market, or is reaching clients for whose needs, characteristics and objectives the financial instrument is not compatible.</p>   | <p>14. Member States shall require investment firms to review the financial instruments they manufacture on a regular basis, taking into account any event that could materially affect the potential risk to the identified target market.</p> <p>Investment firms shall consider if the financial instrument remains consistent with the needs, characteristics and objectives, <b>including any sustainability preferences</b>, of the target market and if it is distributed to the target market, or reaches clients for whose needs, characteristics and objectives the financial instrument is not compatible.</p>   |
| <p><b>Artikel 10 paragraf 2 (første underparagraf)</b> – <b>Produktstyringsforpligtelser for distributører</b></p>                               | <p>2. Member States shall require investment firms to have 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 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, firms shall identify any groups of clients for whose needs, characteristics and objectives the product or service is not compatible.</p> <p>[...]</p>  | <p>2. Member States shall require investment firms to have 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, <b>including any sustainability preferences</b>, 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 for whose needs, characteristics and objectives the product or service is not compatible.</p> <p>[...]</p>  |
| <p><b>Artikel 10 paragraf 5</b><br/>– <b>Produktstyringsforpligtelser for distributører</b></p>  | <p>5. Member States shall require investment firms to 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. Firms shall assess at least whether the product or service remains consistent with the needs, characteristics and objectives of the identified target market and whether the intended distribution strategy remains appropriate. Firms shall reconsider the target market and/or update the product governance arrangements 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.</p> | <p>5. Member States shall require investment firms to 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. Firms shall assess at least whether the product or service remains consistent with the needs, characteristics and objectives, <b>including any sustainability preferences</b>, of the identified target market and whether the intended distribution strategy remains appropriate. Firms shall reconsider the target market and/or update the product governance arrangements 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.</p> |