



France

AMF imposes detailed new requirements for the use of non-financial (ESG) criteria in the marketing of funds in France

The Autorité des Marchés (“AMF”) in France has issued a detailed policy statement setting out a range of new requirements and recommendations for funds, including foreign UCITS and AIFs, which promote themselves in France as pursuing sustainable, environmental or social/governance policies, such as SRI, ESG, integration, responsible, sustainable, green, ethical, social, impact, low carbon (“**non-financial approaches**” or “ESG Investment Strategies”).

The AMF has confirmed that **all foreign UCITS which are marketed for sale in France fall into scope** of the new requirements **irrespective of whether the UCITS is marketed solely to professional investors in France. The requirements also apply to AIFs which are marketed to retail investors in France.**

Objectives

The aim of the new provisions is to ensure that regulatory documentation, such as the Prospectus and KIIDs, and marketing information include specific disclosures to ensure that the ESG-related information provided to investors is proportionate to the actual application of the relevant non-financial approaches relating to sustainable investment in the fund’s investment strategy.

Only strategies with significant engagement with such criteria will be able to present non-financial criteria relating to sustainable investment as “key aspects” of their marketing and fund documentation.

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The principles underlying the policy document are

- To encourage and support momentum in favor of sustainable development, while ensuring trust and good practice;
- To ensure the information provided to investors in the context of diverse strategies and investor expectations is accurate, clear and not misleading in order to reduce the risk of greenwashing;
- To ensure information provided to investors is proportionate to the funds actual consideration of the non-financial characteristics.

“Key Aspect”

The policy document sets down minimum standards which must be met in order for non-financial criteria or ESG Investment Strategies to be made a “key aspect” of product communication, including measurable objectives for the consideration of such non-financial approaches.

A “key aspect” includes referencing sustainability-related information:¹

- in the name of the fund;
- in the KIID; or
- in marketing material (unless the sustainability-related information is only mentioned very briefly and in a proportionate manner).

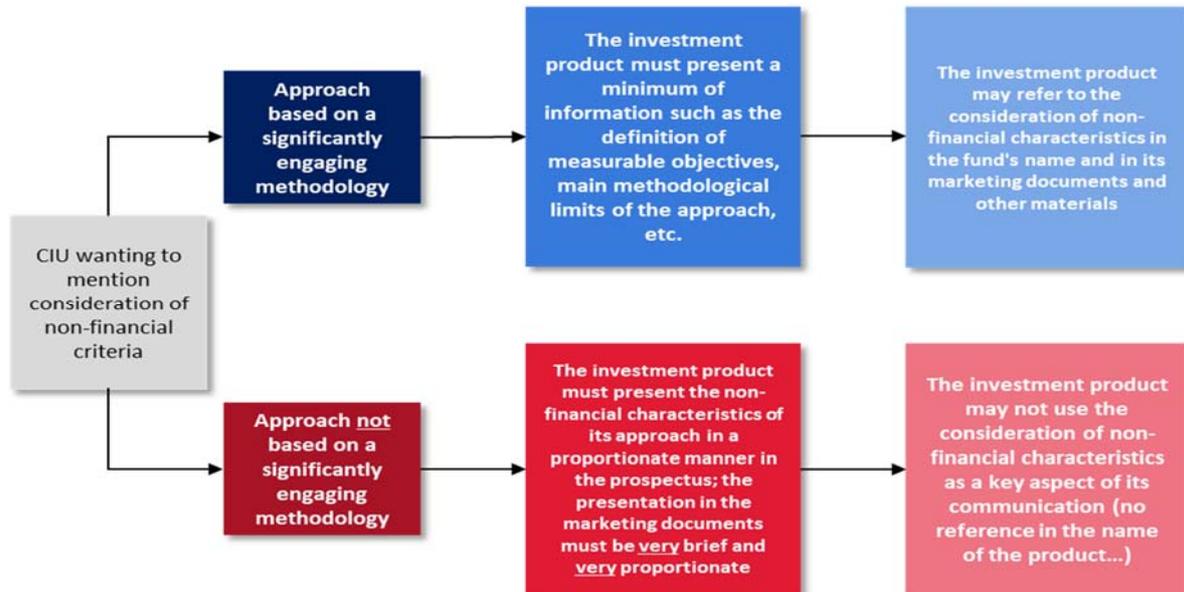
Regulatory documents (e.g. Prospectus, KIIDs) are expected to present an investment objective detailing the non-financial aspect, the type of approach practiced and indications of the selection and management methods used and nature of the selection criteria in the case of certain investments. The policy document specifies that only classifications of non-financial information included in the regulatory documentation may be included in marketing materials.

Requirements for Foreign UCITS

The requirements imposed by the AMF apply on a “comply or explain” basis. In order to be able to present non-financial information as a “key aspect” in the fund’s regulatory and marketing materials, the fund management company will be required to comply with five positions (as detailed below) or alternatively must include a disclaimer in the relevant funds marketing documentation.

¹ It is worth noting that the inclusion of disclosures on non-financial considerations (or ESG Investment Strategies) only in the prospectus of the relevant fund in a disproportionate manner is not considered as presenting them as a “key aspect” of communication.

Minimum standards for funds which wish to disclose Non-Financial Objectives



Positions adopted by the AMF

The paper includes eight “Positions” and a series of further detailed non-binding recommendations which the AMF believe represent best practice. Five of the positions are applied directly to foreign UCITS and in scope AIFs which present non-financial information as a key aspect of communication in France. These applicable positions for foreign funds are summarized below with further information on the non-binding recommendations available from the AMF policy statement.

Position 1

The information provided regarding the consideration of non-financial criteria must be proportionate to the objective and effective impact of the consideration of non-financial criteria in the management of collective investment products.

Position 2

Only collective investment products which comply with the following characteristics can make non-financial characteristics a key aspect of communication:

- a) the approach adopted is engaging in that it provides in the regulatory documents for measurable objectives concerning consideration of non-financial criteria;*
- b) the consideration of non-financial criteria must have a significant impact on the objectives under defined criteria;*
- c) The analysis of non-financial criteria must be performed on at least 90% of the portfolio (based on issuers/NAV), excluding specific bonds, public/quasi-public issuers, specified liquid assets.*

When the KIID mentions consideration of non-financial criteria, it should describe concisely the main methodological limits to the non-financial strategy implemented when they are significant (within the size limits stipulated by the KIID and referring to the prospectus for more details when these aspects require detailed explanations). When the KIID does not provide such information, these explanations should appear in the prospectus.

Position 4

In order to assess the significantly engaging nature of the approach in the regulatory documentation, at least the following information should be presented in the prospectus:

- The minimum measurable objectives adopted in accordance with Position No. 2;*
- The portfolio's minimum rate of analysis of non-financial factors.*

Further information on the comparison of the investment universe and that on which non-financial analysis is performed, should be included in either in the KIID, or in the Prospectus in order to report on the effective reduction in the initial universe or the significant improvement in the portfolio's non-financial rating relative to said universe.

This paragraph does not apply to approaches not using a comparison with their investment universe as part of their consideration of non-financial criteria.

Position 6

In order to ensure that the information is clear and accurate and not misleading, commercial documents and prospectuses of collective investments using the term "SRI" must indicate that they do not benefit from the SRI label when they are not labelled.

Disclaimers to be included in fund marketing documentation where AMF positions are not complied with

Where a foreign UCITS/AIF presents non-financial information as a key aspect of communication and does not meet each of positions 1-4 and 6, the AMF will require that the marketing materials of such fund include either of the following risk factors in prominent text:

"Investors should note that, relative to the expectations of the Autorité des Marchés Financiers, this [UCITS] presents disproportionate communication on the consideration on non-financial criteria in its investment policy".

Where the reference to the non-financial factors is included solely in the name of the fund, the following risk factor should be included:

“Investors should note that, relative to the expectations of the Autorité des Marchés Financiers, the name of this [UCITS] is disproportionate to the consideration of non-financial criteria in its investment policy”.

Timing

The requirements apply immediately for new registrations to market in scope funds in France.

In the case of funds already registered to market in France any necessary revisions to the marketing documentation, and if applicable, to the KIID and name of the fund must be made by 30 November 2020.

Any necessary updates must be made to the prospectus by 10th March 2021, coinciding with the date on which certain sustainability disclosures must be included in the prospectuses of EU funds under the Sustainability Disclosures Regulation².

In this regard, the AMF policy document notes that it may have to be refined in the future depending on evolving European regulation and changing market practices and to have a finer distinction between the various non-financial investment management approaches.

Recommended Action

UCITS and in scope AIFs referencing non-financial criteria which market or propose to market in France should undertake a review of the disclosures relating to such sustainability criteria in their regulatory documentation and marketing materials and consider how the new requirements will be addressed by the relevant deadlines.³

If you have any questions please contact a member of the fund registrations team or your usual Dillon Eustace contact.

June 2020

² 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.

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