

Introduction



Two main aspects to keep in mind:

1. Your capacity determines which public rules apply:

Three different roles for financial institutions:

- (i) Large enterprises (more than 500 persons), including financial companies;
- (ii) Financial companies as shareholders (pensionfunds);
- (iii) Financial companies providing products or services to clients (end investors) as:
 - a) financial market participant; or,
 - b) financial advisor.

2. Liability is based on civil law.

Civil Law: Supply chain liability



Supply chain liability is the liability of a company for a harm caused **by its business partners.**

A company may be exposed to **supply chain liability**, if it:

- (i) causes damage** in violation of a duty not to cause harm or to prevent harm at its suppliers' sites.
- (ii) or fails to prevent damage** in violation of a duty not to cause harm or to prevent harm at its suppliers' sites.

A corporation's supply chain often involves **contractual relationships** (such as those relating to suppliers and employees) and **non-contractual relationships** (such as the impact of a company's operations on the local community, its influence on the environment).

(see: Models of Corporate Supply Chain Liability, Penelope A. Bergkamp)

Due diligence

Liability 1: Due diligence is not adequate

- This Regulation maintains the requirements for financial market participants and financial advisers to act in the best interest of end investors, including but not limited to, the requirement of **conducting adequate due diligence prior to making investments.**
- In order to comply with their duties under those rules, financial market participants and financial advisers should integrate in their processes, **including in their due diligence processes**, and **should assess on a continuous basis** not only all relevant financial risks but also including all relevant sustainability risks that might have a relevant material negative impact on the financial return of an investment or advice.
- Article 4 SFDR, Financial **market participants** shall publish and maintain on their websites:
 - (a) where they consider principal adverse impacts of investment decisions on sustainability factors, **a statement on due diligence policies with respect to those impacts**, taking due account of their size, the nature and scale of their activities and the types of financial products they make available.

Pre-contractual information and best interest clients



Liability 3a: failure pre-contractual information and best interest clients

Financial market participants and financial advisers should be required **to disclose specific information** regarding their approaches to the **integration of sustainability risks** and the consideration of adverse sustainability impacts.

The sustainability risk assessments and related pre-contractual disclosures by financial market participants should feed into pre-contractual disclosures by financial advisers. Financial advisers should disclose how they take sustainability risks into account in the selection process of the financial product that is presented to the end investors before providing the advice, regardless of the sustainability preferences of the end investors.

The current disclosure requirements set out in Union law do not require the disclosure of all the information necessary to properly inform end investors about the sustainability-related impact of their investments in financial products with environmental or social characteristics or financial products which pursue sustainability objectives. **Therefore, it is appropriate to set out more specific and standardised disclosure requirements** with regard to such investments. For instance, the overall sustainability-related impact of financial products should be reported regularly by means of indicators relevant for measuring the chosen sustainable investment objective.

Suitability assessment



Liability 4: Suitability assessment and appropriateness test MIFID II

Selection:

Financial advisers should disclose **how they take sustainability risks into account** in the **selection process of the financial product that is presented** to the end investors before providing the advice, regardless of the sustainability preferences of the end investors.

Suitability:

This should be without prejudice to the application of provisions of national law transposing Directives 2014/65/EU and (EU) 2016/97, in particular the obligations on financial market participants and financial advisers as regards product governance, **assessments of suitability and appropriateness, and the demands-and-needs test.**