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April 4, 2022

EU ESG: ESAs Publish Updated Supervisory Statement on SFDR

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TO: ICI Members

ICI Global Members

ESG Task Force

EU ESG Disclosure Regulation Working Group SUBJECTS: ESG

International/Global RE: EU ESG: ESAs Publish Updated Supervisory Statement on SFDR

On 24 March 2022, the European Supervisory Authorities (ESAs)[\[1\]](#) published an updated joint supervisory statement[\[2\]](#) on the application of the Sustainable Finance Disclosure Regulation (SFDR).[\[3\]](#) Replacing the initial joint supervisory statement published on 25 February 2021,[\[4\]](#) the updated statement outlines guidance on the application of the SFDR and product disclosures under Articles 5 and 6 of the Taxonomy Regulation.[\[5\]](#)

The updated statement clarifies supervisory expectations for disclosure by financial market participants in the interim period before the application date of the Regulatory Technical Standards (RTS). While the majority of the SFDR requirements have started applying from 10 March 2021, the RTS have not been adopted yet and are currently expected to apply from 1 January 2023.[\[6\]](#) In this regard, the ESAs submitted the draft RTS to the European Commission on 4 February[\[7\]](#) and 22 October 2021.[\[8\]](#) These RTS include rules for pre-contractual, periodic, and website sustainability-related disclosures under the SFDR, as well as Taxonomy-alignment product disclosure. The updated guidance also includes a table[\[9\]](#) laying out the implementation timeline of each disclosure obligation under the SFDR. This memorandum summarizes the guidance provided in the updated statement.

Interim Compliance Before Application of RTS

The ESAs encourage financial market participants to refer to the two draft RTS published in February and October 2021 as a reference when applying the provisions of the SFDR during the interim period until 1 January 2023, the expected application date of the RTS.

Taxonomy-alignment Disclosures for SFDR Articles 8 and 9 Products

SFDR Article 8 products that promote environmental characteristics and SFDR Article 9 products that make sustainable investments contributing to an environmental objective are required to disclose the Taxonomy-alignment of underlying investments in accordance with

Articles 5 and 6 of the Taxonomy Regulation. This disclosure requirement applies from 1 January 2022 in respect of two Taxonomy Regulation's environmental objectives, namely, climate change mitigation and climate change adaptation. For the remaining four Taxonomy Regulation's environmental objectives, the Taxonomy-alignment disclosure requirements will apply from 1 January 2023.

During the interim period between 1 January 2022 and the application date of the RTS, financial market participants are expected to provide an explicit quantification, through the numerical disclosure of the percentage, of the extent to which investments underlying the financial product are Taxonomy-aligned. The ESAs note that information on Taxonomy-eligible activities^[10] should not be provided for such disclosures. Financial market participants may accompany the numerical Taxonomy-alignment disclosure with a qualitative explanation of how the product addresses the determination of the proportion of Taxonomy-aligned investments until the application of the RTS.

Where information is not readily available from public disclosures by investee companies, while estimates should not be used, financial market participants may rely on equivalent information on Taxonomy-alignment directly from investee companies or third-party providers.

Entity-level Principal Adverse Impacts (PAI) Statement

As background, SFDR Article 4 requires financial market participants to disclose how they consider the negative environmental or social impact of their investments. Financial market participants with more than 500 employees are required to start reporting from 30 June 2021, while others are subject to this requirement on a comply-or-explain basis.

Given that the RTS are expected to apply from 1 January 2023, additional details specified by the entity-level "principal adverse sustainability impacts statement"^[11] set out in the RTS should apply from 1 January 2023. In other words, the first statement that contains the PAI indicators^[12] outlined in the RTS should be published by 30 June 2023, with respect to a reference period corresponding to the calendar year of 2022.

Periodic Reporting for SFDR Articles 8 and 9 Products

The SFDR provides that periodic report disclosure for Articles 8 and 9 products applies from 1 January 2022. Financial market participants must prepare their 2022 periodic reports in compliance with the SFDR.

While the RTS have set out a granular list of items to be included in the reporting, focusing on the success of the product in attaining its environmental or social characteristic or sustainable investment objective,^[13] these additional details should be contained in the periodic disclosure from the application date of the RTS (i.e., 1 January 2023). The draft RTS could be used as a reference for periodic disclosures issued between 1 January 2022 and 31 December 2022.

endnotes

- [1] The three ESAs are European Banking Authority (EBA), European Insurance and Occupational Pensions Authority (EIOPA), and European Securities and Markets Authority (ESMA).
- [2] See ESAs Issue Updated Supervisory Statement on The Application of the Sustainable Finance Disclosure Regulation (25 March 2022), available at <https://www.esma.europa.eu/press-news/esma-news/esas-issue-updated-supervisory-statement-application-sustainable-finance>.
- [3] 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, available at <https://eur-lex.europa.eu/eli/reg/2019/2088/oj>.
- [4] See ESAs Issue Recommendations on the Application of the Regulation on Sustainability-Related Disclosures (25 February 2021), available at <https://www.esma.europa.eu/press-news/esma-news/esas-issue-recommendations-application-regulation-sustainability-related>. Also See ICI Memorandum [33139], dated 1 March 2021, available at <https://www.ici.org/memo33139>.
- [5] 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, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32020R0852&from=EN#d1e40-13-1>.
- [6] See Letter from the EU Commission to EP and Council - Information regarding regulatory technical standards under the Sustainable Finance Disclosure Regulation 2019/2088, dated 25 November 2021, available at https://www.esma.europa.eu/sites/default/files/library/com_letter_to_ep_and_council_sfdr_rts-j.berrigan.pdf.
- [7] See Final Report on draft Regulatory Technical Standards with regard to the content, methodologies and presentation of disclosures pursuant to Article 2a(3), Article 4(6) and (7), Article 8(3), Article 9(5), Article 10(2) and Article 11(4) of Regulation (EU) 2019/2088 (2 February 2021), available at <https://www.eba.europa.eu/regulation-and-policy/transparency-and-pillar-3/joint-rt-s-esg-disclosure-standards-financial-market-participants> ("February RTS").
- [8] See Final Report on draft Regulatory Technical Standards with regard to the content and presentation of disclosures pursuant to Article 8(4), 9(6) and 11(5) of Regulation (EU) 2019/2088 (22 October 2021), available at https://www.esma.europa.eu/sites/default/files/library/jc_2021_50_-_final_report_on_taxonomy-related_product_disclosure_rts.pdf ("October RTS"). Also See ICI Memorandum [33924], dated 29 November 2021, available at <https://www.ici.org/memo33924>.
- [9] See Updated Joint Supervisory Statement, *supra* note 2, at Annex, p.6.
- [10] Taxonomy-eligible activities refer to economic activities that are described in the delegated acts adopted pursuant to Article 10(3), Article 11(3), Article 12(2), Article 13(2),

Article 14(2) and Article 15(2) of the Taxonomy Regulation, irrespective of whether such activities meet all of the technical screening criteria laid down in those delegated acts.

[\[11\]](#) See February RTS, *supra* note 7, at Annex 1, p.52.

[\[12\]](#) See February RTS, *supra* note 7, at Table 1, p.59.

[\[13\]](#) See February RTS, *supra* note 7, at Chapter V, p.44.

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