

## **EU SUSTAINABLE FINANCE & ESG FACTORS: NEW DIRECTIONS FROM EU AUTHORITIES**

ESG issues and sustainability are fast-becoming core elements of investments decisions and strategies, significantly influencing a company's investment value. Building on our previous analysis of the new regulatory framework that is accompanying this evolution (see "[EU sustainable finance & ESG factors: recent legal implications for investors and entrepreneurs](#)"), **recent developments** offer the opportunity to comprehend:

- **which disclosure rules already apply** for financial market participants and financial advisers;
- the **correlation between** Regulation (EU) 2019/2088 (the "**SFDR Regulation**" or "**SFDR**"), on sustainability-related disclosures in the financial services sector and Regulation (EU) 2020/852 (the "**Taxonomy Regulation**" or "**TR**"), which creates a classification system for sustainable economic activities.

### **Draft Regulatory Technical Standards and Joint Supervisory Statement**

On 2 February 2021, the European Supervisory Authorities (**ESAs**) have published the [Joint Committee Draft Regulatory Technical Standards \(RTS\)](#) with regard to the content, methodologies and presentation of sustainability-related disclosures under Articles 2a, 4(6) and (7), 8(3), 9(5), 10(2) and 11(4) of the SFDR.

At the same time, it should be noted that the definitive application of RTS - key for the disclosure framework - is expected for 1 January 2022, while most of the SFDR provisions on sustainability-related disclosures already apply from 10 March 2021.

Accordingly, in a [Joint Supervisory Statement](#) issued on February 25, 2021, ESAs sought to mitigate the risk of divergent application of SFDR within the period from 10 March 2021 to the application date of the RTS, providing **guidance for the "interim period"**, in order to achieve an effective and consistent application and national supervision of the SFDR.

Financial market participants and financial advisers should carefully look at the Joint Supervisory Statement and its **annex on the application timelines of SFDR and TR provisions**. Such table illustrate disclosure obligations at an entity and product level, under both the SFDR and TR, highlighting deadlines, required compliance activities and draft application date of RTS provisions.

### **Joint Consultation Paper on Taxonomy-related sustainability disclosures**

On 15 March 2021, ESA's issued the [Joint Consultation Paper on Taxonomy-related sustainability disclosures](#) setting out the proposed RTS on content and presentation of disclosures pursuant to Article 8(4), 9(6) and 11(5) of the SFDR.

The proposal from ESA's aims **to minimize duplication and complexity**, to fulfil the taxonomy-related product empowerments and to have the **RTS on disclosures rules function** as a "*single rulebook for sustainability disclosures at Level 2 for both the original empowerments in SFDR and the additional ones added by TR*".

As an example, in the proposal the ESAs specified that *“if a product states that the activities it invests in do not significantly harm any of the environmental objectives and comply with the minimum safeguards, no further SFDR-specific DNSH disclosure is required in addition for those investments”*. Moreover, it is highlighted that *“the existing SFDR RTS disclosures would continue to apply to Article 9 products pursuing social objectives, as the Taxonomy does not yet cover those objectives, and to Article 9 products pursuing environmental objectives that are not covered by the EU taxonomy”*.

Mostly important, the Consultation Paper includes, as an annex, a **draft set of consolidated SFDR RTS**, to represent what the Draft RTS would look like as amended by the changes proposed by the ESAs. Among the amendments, the ESAs has proposed also some targeted revisions with regards to pre-contractual and periodic disclosures, for instance:

- the identification of whether a financial product has designated an index as a reference benchmark has been shifted to the investment strategy section in the pre-contractual templates;
- the identification of further information being available in website disclosures has been moved as the last item in the pre-contractual disclosures.

Financial market participants and financial advisers should definitely look at the **draft mandatory templates annexed to the Consultation Paper** as further guidance on how to comply with the SFDR and TR. It is worth noting that the choice to impose a template aims at full comparability for the products and a potential higher engagement of end-investors, as well as a stronger legal basis for potential controversies.

Considering that the proposed RTS should be delivered before 1 June 2021, the ESAs have provided for an eight-week **consultation period** - instead of the usual three months - ending on **12 May 2021**. A final report with draft RTS is expected to be issued by late June or early July 2021.