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Updated Joint ESA Supervisory Statement on the application of the Sustainable Finance Disclosure Regulation

1. Objective

1. This Supervisory Statement of the European Supervisory Authorities (ESAs) seeks to mitigate the risk of divergent application of Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (hereinafter referred to as "SFDR") and Article 5 and 6 of Regulation (EU) 2020/852 (Taxonomy Regulation, hereinafter referred to as "TR") within the period from 10 March 2021 (the application date of most of the provisions of the SFDR) to the application date of the Regulatory Technical Standards ("RTS") under empowerments from SFDR which covers the content, methodologies and presentation of sustainability-related disclosures in Articles 2a(3), 4(6) and (7), 8(3), 8(4), 9(5), 9(6), 10(2), 11(4) and 11(5) of the SFDR.

2. The overall objective of this statement is to achieve an effective and consistent application and national supervision of the SFDR, promoting a level playing field and the protection of investors.

2. Delay of application date of the RTS and guidance for interim period

3. Financial market participants and financial advisers are required to apply most of the provisions on sustainability-related disclosures laid down in the SFDR from 10 March 2021, while the application of the RTS is delayed to a later date. [1]

4. As the Commission stated in that letter, "*in terms of substance, the application of the Regulation is not conditional on the formal adoption and entry into force or application of the regulatory technical standards as it lays down at Level 1 general principles of sustainability-related disclosures*".

[1] As clarified by the European Commission's Directorate-General for Financial Stability, Financial Services and Capital Markets Union in a letter sent to the ESAs on 20 October 2020 on the application of the SFDR: Letter Ares(2020)5678036 https://www.esma.europa.eu/sites/default/files/library/eba_bs_2020_633_letter_to_the_esas_on_sfdr.pdf.

5. The Commission announced on 8 July 2021[2] its intention to bundle all 13 RTS of the SFDR, including the new empowerments for RTS introduced by the TR in one delegated act. The Commission announced in a letter[3] on 25 November 2021 that the application date of the RTS would be delayed to 1 January 2023. This is in order to provide financial market participants and financial advisers with sufficient time to gather the information necessary to adjust their practices to apply the specific requirements of the RTS, including the product-specific disclosures stemming from the TR. Furthermore, the letter noted that the transitional arrangements foreseen by the ESAs for entity-level principal adverse impact (PAI) disclosures would no longer be relevant (see paragraphs 1-2 of the Annex below).

6. This delay in the application of the RTS has no impact on the application of the TR provisions. Therefore, the taxonomy-alignment related product disclosures[4] apply in respect of the first two environmental objectives[5] from 1 January 2022 according to Article 27(2)(a) of the TR. The supervisory expectation during the interim period before the application of the RTS is that in order to comply with the provision under point (b)[6] of the first subparagraph of Article 5 of the TR, an explicit quantification should be provided through the numerical disclosure as a percentage of the extent to which investments underlying the financial product are taxonomy-aligned. The supervisory expectation is also that information on taxonomy-eligible activities should not be provided for the disclosure of the extent to which investments underlying the financial product are in taxonomy-aligned economic activities. Moreover, while estimates should not be used, where information is not readily available from public disclosures by investee companies, financial market participants may rely on equivalent information on taxonomy alignment obtained directly from investee companies or from third party providers.

7. Until the application of the RTS, the numerical disclosure referred to in paragraph 6 could be accompanied by a qualitative clarification explaining how the financial product addresses the determination of the proportion of taxonomy-aligned investments of the financial product, for example by identifying the sources of information for that determination. Such a clarification should be clear about the taxonomy-alignment of the investments underlying the financial product and should not disclose more information than what is required by Article 5 TR.

8. With regard to the detailed provisions in the RTS, the delay also allows national competent authorities, as designated in accordance with the sectoral legislation referred to in Article 14 of the SFDR, to prepare for the orderly and effective supervision of compliance by financial

[2] This letter also announced a delay to the application date of the RTS to 1 July 2022: letter Ares(2021)4439157 https://www.esma.europa.eu/sites/default/files/library/com_letter_to_ep_and_council_sfdr_rts.pdf
[3] Letter Ares(2021)7263490 https://www.esma.europa.eu/sites/default/files/library/com_letter_to_ep_and_council_sfdr_rts-j.berrigan.pdf
[4] As specified in Articles 8(2a) and 9(4a) SFDR.
[5] Referred to in points (a) and (b) of Article 9 TR, respectively relating to climate change mitigation and climate change adaptation.
[6] The description of 'to what extent' the investments underlying the financial product are in economic activities that qualify as environmentally sustainable in Article 3 TR.

market participants and financial advisers with those requirements.

9. As most of the provisions on sustainability-related disclosures laid down in the SFDR have started applying from 10 March 2021, and the product-related Taxonomy disclosures apply for financial products with respect to the first two environmental objectives from 1 January 2022, the ESAs see merit in specific guidance for national competent authorities, financial market participants and financial advisers in the interim period before the application of the RTS.

10. In addition to the reference to supervisory expectations in paragraph 6, for the sake of applying the provisions of the SFDR without the RTS during the interim period, national competent authorities are encouraged to refer financial market participants and financial advisers to the requirements set out in the draft RTS of the final reports that have been submitted to the European Commission on 4 February and 22 October 2021[7]. The draft RTS submitted to the European Commission on 4 February and 22 October 2021 can be used as a reference for the purposes of applying the provisions of Articles 2a, 4, 8, 9, 10 and 11 of the SFDR and Article 5 and 6 of the TR in the interim period.

11. Furthermore, it is important to note that the draft RTS must still be adopted by the European Commission and that the European Parliament or the Council have the right to object to the draft RTS within a period of three months from the date of notification of the adoption of the Commission Delegated Regulation[8]. Therefore, the Commission Delegated Regulation may differ from the draft RTS in the ESAs' final reports from 4 February and 22 October 2021.

12. Nevertheless, the ESAs recommend national competent authorities to encourage financial market participants and financial advisers to use the interim period until 1 January 2023 to prepare for the application of the RTS.

13. Without prejudice to the above general guidance for the interim period, the ESAs have also set out in the Annex to the present statement some more specific guidance as a reminder of the application timeline of some specific provisions of the SFDR, the TR and the related RTS.

[7] JC 2021 50 (jc_2021-50-final-report-on-taxonomy-related-product-disclosure-rts.pdf (europa.eu)) - containing the original draft RTS submitted on 4 February 2021 (https://www.esma.europa.eu/sites/default/files/library/jc_2021_03_joint_esas_final_report_on_rts_under_sfdr.pdf) and the subsequent amendments to those RTS through the additional draft RTS for taxonomy-related product disclosures

[8] The three-month period may also be extended by a further three month-period at the initiative of either the European Parliament or the Council.

Annex: Application timelines in SFDR and TR

Application timeline for entity-level principal adverse impact statement

1. While the requirements in the SFDR relating to the entity-level disclosure of principal adverse impacts apply from 10 March 2021 on a comply or explain basis, except for financial market participants referred to in Article 4(3)-(4) SFDR[9] who had to start reporting from 30 June 2021, the additional detail specified by the entity-level 'principal adverse sustainability impacts statement' set out in the RTS should apply from 1 January 2023. The RTS establishes a disclosure framework of principal adverse impacts by 30 June each year with a reference period of the previous calendar year. As the Commission proposes that the RTS should apply from 1 January 2023, this means that the additional detail specified in the RTS must be disclosed in accordance with the RTS from that date.

2. The first information relating to a reference period to be disclosed in accordance with the RTS should be made in a statement to be published by 30 June 2023 in respect of a reference period corresponding to the calendar year of 2022[10].

Application timeline for products' periodic disclosure

3. Periodic disclosures referred to in Article 11(2) of the SFDR must comply with the requirements laid down in that Article from 1 January 2022.[11] This means that financial market participants must draw up in 2022 periodic reports according to their sectoral legislation listed under Article 11(2) in compliance with the SFDR, irrespective of reference periods.

4. As the RTS are expected to be applied from 1 January 2023, the additional detail provided by Chapter V of the RTS should be contained in periodic disclosures referred to in Article 11(2) SFDR from that date. As stated in paragraph 10 of the supervisory statement above, for periodic disclosures issued between 1 January 2022 and 31 December 2022, the draft

[9] Article 4(3) SFDR applies to financial market participants exceeding on their balance sheet dates the criterion of the average number of 500 employees during the financial year, Article 4(4) SFDR applies to financial market participants which are parent undertakings of a large group referred to in Article 3(7) of Directive 2013/34/EU exceeding on the balance sheet date of the group, on a consolidated basis, the criterion of the average number of 500 employees during the financial year.

[10] As stated by the Commission in the 25 November letter: '*Since the grounds for the transitional arrangement envisaged in Article 4(3) of the draft regulatory technical standards jointly submitted by the three Authorities to the European Commission on 4 February 2021 (JC 2021 03) are no longer relevant, and in view of the overall deferral of the application of the delegated act, we envisage that financial market participants, which publish the statement referred in Article 4(1), point (a), of Regulation 2019/2088, or paragraphs 3 and 4 of Article 4 of that Regulation will have to comply with the disclosure requirements on principal adverse impacts on sustainability matters laid down in the delegated act the first time by 30 June 2023, i.e. the first reference period under the regulatory technical standards to be 1 January 2022 to 31 December 2022.*

[11] The SFDR applies other sustainability-related disclosure requirements after 10 March 2021. In particular, Articles 8(2a) and 9(4a) of the SFDR apply in respect of the environmental objectives referred to in points (a) and (b) of Article 9 of the Taxonomy Regulation from 1 January 2022 and in respect of the environmental objectives referred to in points (c) to (f) of Article 9 of the Taxonomy Regulation from 1 January 2023.

RTS can be used as a reference.

5. The ESAs have provided below a table laying out the implementation timelines of the various disclosure obligations in SFDR and the TR.

Summary table of SFDR and TR disclosure obligations on financial market participants, financial advisers and financial products

Article	**Entity or product level disclosure**	**Content**	**Are the Level 1 provisions complemented by RTS?**	**Application of Level 1 obligation**	**Draft application date of RTS provisions**
Article 3 SFDR	Entity (financial market participants and financial advisers)	Sustainability risks policy	No	10 March 2021	N/A
Article 4(1)(a), 4(2), 4(3), 4(4), 4(5)(a) SFDR	Entity (financial market participants and financial advisers)	Principal adverse impacts (PAI) of investment decisions on sustainability factors at entity level	Yes	10 March 2021 (30 June 2021 for financial market participants or parent undertakings of financial market participants with more than 500 employees)	1 January 2023. The first statement to be published by 30 June 2023 relating to a reference period (including PAI indicators in Table 1 of Annex 1) corresponding to the previous calendar year. The first possible reference period under the RTS is 1 January 2022 – 31 December 2022 and the statement covering that reference period must be published no later than 30 June 2023.

Article	Entity or product level disclosure	Content	Are the Level 1 provisions complemented by RTS?	Application of Level 1 obligation	Draft application date of RTS provisions
Article 4(1)(b), 4(5)(b) SFDR	Entity (financial market participants and financial advisers)	No consideration of PAI at entity level	Yes	10 March 2021	1 January 2023
Article 5 SFDR	Entity (financial market participants and financial advisers)	Consistency of remuneration policies with the integration of sustainability risks	No	10 March 2021	N/A
Article 6 SFDR	Financial product and financial advice	Integration of sustainability risks into investment decisions and investment advice	No	10 March 2021	N/A
Article 7(1) SFDR	Financial product	Consideration of PAI at product level	No	30 December 2022	N/A
Article 7(2) SFDR	Financial product	No consideration of PAI at product level	No	10 March 2021	N/A
Article 8 SFDR and Article 6 TR	Financial product	Pre-contractual disclosures for products promoting environmental or social characteristics	Yes	(1) 10 March 2021 (Article 8(1) and (2) SFDR) (2) 1 January 2022 for the taxonomy-	1 January 2023

Article	Entity or product level disclosure	Content	Are the Level 1 provisions complemented by RTS?	Application of Level 1 obligation	Draft application date of RTS provisions
				related disclosures for environmental objectives referred to in Article 9(a)-(b) TR (Article 8(2a) SFDR) (3) 1 January 2023 for the taxonomy-related disclosures for environmental objectives referred to in Article 9(c)-(f) TR (Article 8(2a) SFDR)	
Article 9 SFDR and Article 5 TR	Financial product	Pre-contractual disclosures for products with sustainable investment objective	Yes	(1) 10 March 2021 (Article 9(1), (2) and (3) SFDR) (2) 1 January 2022 for the taxonomy-related disclosures for environmental objectives referred to in Article 9(a)-(b)	1 January 2023

Article	Entity or product level disclosure	Content	Are the Level 1 provisions complemented by RTS?	Application of Level 1 obligation	Draft application date of RTS provisions
				TR (Article 9(4a) SFDR) (3) 1 January 2023 for the taxonomy-related disclosures for environmental objectives referred to in Article 9(c)-(f) TR (Article 9(4a) SFDR)	
Article 10 SFDR	Financial product	Website disclosures for Article 8 and 9 SFDR products	Yes	10 March 2021	1 January 2023
Article 11 SFDR, Article 5-6 TR	Financial product	Periodic disclosures for Article 8 and 9 SFDR products and Article 5 and 6 TR products	Yes	(1) Periodic disclosures issued from 1 January 2022, including the taxonomy-related disclosures for environmental objectives referred to in Article 9(a)-(b) TR (Article 11(1) SFDR) (2) 1 January 2023 for the taxonomy-	Periodic disclosures issued from 1 January 2023 including the taxonomy-related product disclosures

Article	Entity or product level disclosure	Content	Are the Level 1 provisions complemented by RTS?	Application of Level 1 obligation	Draft application date of RTS provisions
				related disclosures for environmental objectives referred to in Article 9(c)-(f) TR (Article 11(1)(c) and (d) SFDR)	
Article 12 SFDR	Entity (financial market participants and financial advisers) and financial product	Review of disclosures	No	10 March 2021	N/A
Article 13 SFDR	Entity (financial market participants and financial advisers) and financial product	Marketing communications not contradicting disclosures in SFDR	Optional ITS	10 March 2021	Option to develop ITS on standardised presentation of marketing communication has not been exercised by the ESAs to date