

SFDR – Revised Secondary ESG Disclosure Measures

February 11, 2021

1. Introduction

The European Supervisory Authorities (ESAs) have published the final draft of the Regulatory Technical Standards¹ (RTS) under the EU Sustainable Finance Disclosure Regulation² (SFDR), which set out the detailed disclosure requirements for the principal adverse impacts sustainability statements³ and the disclosure requirements for Article 8⁴ and Article 9⁵ funds or portfolios, together with the related mandatory disclosure templates.

The revised RTS take account of the feedback received to the ESAs' Consultation Paper of 23 April 2020⁶ on the first draft of the RTS and also incorporate the mandatory disclosure templates following the feedback received by the ESAs to their online survey and consumer testing exercise.⁷

In this alert, we cover the key changes in the revised RTS and the use of the mandatory disclosure templates as they relate to alternative investment managers and their funds or portfolios. The format of the principal adverse impacts sustainability statements and the four mandatory disclosure templates are annexed to this client alert for easier reference.

2. Timing

The key disclosure requirements under SFDR (i.e., the Level 1 text) will apply in the EU from 10 March 2021, as previously stated by the European Commission.⁸ The ESAs have stated that the detailed requirements in the RTS, once approved and adopted by the European Commission, should apply from 1 January 2022.⁹ Therefore, although the RTS is informative for the purposes of complying with the 10 March deadline, the requirements of the RTS will not be binding.

3. Investment Manager-Level Disclosures: Adverse Impact Reporting

Where an investment manager considers the principal adverse impacts of investment decisions on sustainability factors¹⁰, it must publish a statement on its due diligence policies with respect to those impacts, taking due account of its size, the nature and scale of its activities and the type of funds or portfolios it makes available (the

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“Principal Adverse Sustainability Impacts Statement”). See Annex I of this alert for the revised format of the Principal Adverse Sustainability Impacts Statement.

The Principal Adverse Sustainability Impacts Statement is completed by reference to two types of indicators:

- a. **Universal mandatory indicators (“core indicators”)**¹¹, in respect of which a manager has no discretion but to consider these indicators as always having a negative impact on the sustainability factors.
- b. **Additional indicators (“opt-in”)**¹², in respect of which a manager is afforded discretion to use as an additional means of identifying, assessing and prioritising additional principal adverse impacts that are not core indicators.

In the revised RTS, the ESAs have now spread the core and opt-in indicators across three broad asset classes, with separate indicators for each:

1. Investments in investee companies.
2. Investments in sovereigns and supranationals.
3. Investments in real estate assets.

In addition, the ESAs have “revised the balance between the two lists of [adverse sustainability] indicators” by reducing the number of mandatory indicators from 32 to 18, consisting of 14 for investee companies, two for sovereigns and supranationals, and two for real estate. The ESAs have also incorporated an “actions taken” column into the template to be completed for each mandatory indicator “to give greater prominence to the engagement and other actions taken and planned by financial market participants” with respect to principal adverse impacts.¹³

Periodic Reporting Deadline and Frequency

The RTS establishes a framework of reporting on principle adverse impacts by 30 June each year, with a reference period of the previous calendar year. Although this means that reporting obligation under the RTS applies from 1 January 2022, the ESAs have stated that for first time reporting, the earliest information relating to a reference period to be disclosed in accordance with the RTS would not be made until 2023 in respect of a reference period relating to 2022.¹⁴

4. Fund or Portfolio-Level Disclosures: Pre-Contractual and Periodic Reporting

Annexed to the RTS are the four mandatory disclosure templates that must be used for Article 8 and Article 9 fund or portfolio-level pre-contractual and periodic disclosures. The RTS now permits managers to “adapt the font type and size as well as colours of the templates.”¹⁵ It is a requirement for the pre-contractual disclosure templates to be annexed to the Alternative Investment Fund Managers Directive (AIFMD) investor disclosure statement or to the Markets in Financial Instruments Directive (MiFID) client disclosures, and for the periodic disclosure templates to be annexed to the AIFMD Annual Report or to the MiFID periodic client reporting.

There is no specific template for the Article 6 disclosures on the integration of sustainability risks, as these must be incorporated into the pre-contractual documentation of the relevant fund or portfolio, specifically in the AIFMD investor

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disclosure statement for an AIF¹⁶ or in the MiFID client disclosures for discretionary portfolio management services.

The ESAs have redrafted the list of items required to be disclosed in the pre-contractual and periodic disclosure templates, such that the information is now in “Question and Answer” format.¹⁷ The revised format requires managers to provide specific answers to the pointed questions, compared with the broader, open-ended style subheadings format under the previous RTS.

The ESAs have reduced the number of “top investments” that must be reported under the periodic disclosure requirements from 25 to the 15 largest investments by the fund or portfolio during the reference period, which information must include the sector and countries of those investments.¹⁸ Given the level of detail included in the disclosure requirements, it remains to be seen whether compliance with this requirement remains possible due to confidentiality reasons, as has been commented upon by respondents to the Consultation Paper.¹⁹

Periodic Reporting Deadline and Frequency

The periodic reports for Article 8 and 9 funds or portfolios under the periodic reporting requirements²⁰ must comply with the reporting obligation from 1 January 2022. This means that financial market participants must draw up in 2022 the respective periodic reports in compliance with the SFDR.²¹

5. Disclosure Templates

The RTS provide little scope for modifying the disclosure templates as these must be prepared in accordance with the various requirements of the RTS, which determine the order, sub-headings and content to be included. However, some flexibility is permitted in the revised RTS, which now states that “financial market participants may adapt the font type and size as well as colours of the templates provided in the Annexes.”²² The RTS have also removed the mandatory use of graphical representations in the disclosures.²³

Annexes to this alert:

Annex I: Format of the Principal Adverse Sustainability Impacts Statement ([See here](#)).

Annex II: Template Pre-Contractual Disclosure for Article 8 Funds or Portfolios ([See here](#)).

Annex III: Template Pre-Contractual Disclosure for Article 9 Funds or Portfolios ([See here](#)).

Annex IV: Template Periodic Disclosure for Article 8 Funds or Portfolios ([See here](#)).

Annex V: Template Periodic Report for Article 9 Funds or Portfolios ([See here](#)).

¹ 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 (the “Final Report”) ([See here](#)).

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 ([See here](#)).

³ Article 4 SFDR.

⁴ A financial product that promotes, among other characteristics, environmental or social characteristics, or a combination of those characteristics, and the companies in which the investments are made follow good governance practices.

⁵ A financial product that has sustainable investment as its objective. This means that the relevant fund or portfolio must comply with the EU rules defining a “sustainable investment” under the SFDR or the EU Taxonomy Regulation, as applicable.

⁶ Joint Consultation Paper ESG disclosures: Draft regulatory technical standards with regard to the content, methodologies and presentation of disclosures pursuant to Article 2a, Article 4(6) and (7), Article 8(3), Article 9(5), Article 10(2) and Article 11(4) of Regulation (EU) 2019/2088, 23 April 2020 (See [here](#)).

⁷ ESAs Launch Survey on Environmental and/or Social Financial Product Templates (See [here](#)).

⁸ Application of Regulation (EU) 2019/2088 on the sustainability-related disclosures in the financial services sector, Letter from the European Commission to the ESAs, 20 October 2020 (See [here](#)).

⁹ Article 74, draft RTS.

¹⁰ Article 4(1) SFDR.

¹¹ See Table 1 of the Principal Adverse Sustainability Impacts Statement. The core indicators are: (1) GHG emissions; (2) Carbon footprint; (3) Green House Gas (GHG) intensity of investee companies; (4) Exposure to companies active in the fossil fuel sector; (5) Share of non-renewable energy consumption and production; (6) Energy consumption intensity per high impact climate sector; (7) Activities negatively affecting biodiversity-sensitive areas; (8) Emissions to water; (9) Hazardous waste ratio; (10) Violations of UN Global Compact principles and Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises; (11) Lack of processes and compliance mechanisms to monitor compliance with UN Global Compact principles and OECD Guidelines for Multinational Enterprises; (12) Unadjusted gender pay gap; (13) Board gender diversity; (14) Exposure to controversial weapons (anti-personnel mines; cluster munitions; chemical weapons and biological weapons); (15) GHG intensity; (16) Investee countries subject to social violations; (17) Exposure to fossil fuels through real estate assets; and (18) Exposure to energy-inefficient real estate assets.

¹² See Tables 2 and 3 of the Principal Adverse Sustainability Impacts Statement.

¹³ Final Report, page 7.

¹⁴ Final Report, page 7 and Article 4(3) draft RTS; For investment managers not considering the principal adverse impacts of investment decisions on sustainability factors, the RTS set out the statement and explanation that must be published on a manager’s website.

¹⁵ Article 2(3) draft RTS.

¹⁶ Article 23 AIFMD.

¹⁷ Article 13(3) and 20(3) for pre-contractual disclosures; Article 58(2) and 64(2) draft RTS for periodic disclosures.

¹⁸ Article 60 and Article 66 draft RTS.

¹⁹ Final Report, page 149.

²⁰ Article 11(2) SFDR.

²¹ Final Report, page 10.

²² Article 2(2) draft RTS.

²³ Article 63(2) Article 69(2) draft RTS.

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