

THE LONG ANTICIPATED DISCLOSURE RULES ON SUSTAINABLE INVESTMENTS ARE HERE

The European Commission (EC) state that sustainability-related disclosures in the financial services sector should be sufficiently clear, concise and prominent to enable end investors to take informed decisions. The aim is for end investors to have access to reliable data that they can use and analyse in a timely and efficient manner.

As part of achieving this aim, the EC, by way of a Delegated Regulation, adopted on 6th April 2022 regulatory technical standards (RTS) to be used by financial market participants (FMPs) when disclosing sustainability-related information under the Sustainable Finance Disclosure Regulation (SFDR).¹ Five separate Annexes were also adopted.

Aim of the Delegated Regulation







The Delegated Regulation specifies the exact content, methodology and presentation of the information to be disclosed, thereby improving its quality and comparability. Additional information on the reporting templates is also contained within the five separate Annexes.

Under the RTS, FMPs (for example asset managers) will provide detailed information about how they tackle and reduce any possible negative impacts that their investments may have on the environment and society in general. The new requirements will also help to assess the sustainability performances of financial products, thus contributing to strengthening investor protection and reducing greenwashing.

Structure of the Delegated Regulation

Given the interconnectedness of the thirteen SFDR draft RTS constructed to date,² and to make sure that they are fully consistent, the EC has bundled them into a single Delegated Regulation.

In terms of its content, at a high-level the Delegated Regulation contains provisions on:

-  Definitions and general provisions – Chapter I
-  Transparency about adverse impacts on sustainability factors – Chapter II
-  Pre-contractual product disclosure – Chapter III
-  Website product disclosure – Chapter IV
-  Product disclosure in periodic reports – Chapter V
-  Final provisions – Chapter VI

Looking at the Chapters in more detail

Definitions and general provisions

Chapter I contains Articles 1-3 which cover definitions and general provisions, general principles for the presentation of information and reference benchmarks with basket indexes.

New definitions are introduced which cover the following terms:

- Financial undertaking;
- Non-financial undertaking;
- Sovereign exposure;
- Environmentally sustainable economic activity; and
- Enabling economic activity.

Transparency about adverse impacts on sustainability factors

Chapter II specifies the content, methodology and presentation of the information required under Articles 4(10) to (5) of the SFDR for sustainability indicators on:

- Adverse impacts on the climate and other environment-related adverse impacts; and
- Adverse impacts in the field of social and employee matters, respect for human rights, anti-corruption and anti-bribery matters.

In more detail, Chapter II contains Articles 4-13 looking at requirements for:

1) FMPs

- The statement by FMPs that they do consider principal adverse impacts (PAIs) of their investment decisions on sustainability factors;

- Summary section;
- Description of the PAIs of investment decisions on sustainability factors;
- Description of policies to identify and prioritise PAIs of investment decisions on sustainability factors;
- Engagement policies section;
- References to international standards section; and
- Historical comparison.

2) Financial advisers

- Statement by financial advisers that they do consider in their insurance or investment advice PAIs on sustainability factors.

3) FMPs and financial advisers

- Statement by FMPs that they do not consider adverse impacts of their investment decisions on sustainability factors; and
- Statement by financial advisers that they do not consider adverse impacts of investment decisions on sustainability factors in their investment or insurance advice.

Pre-contractual product disclosure

Chapter III sets out the details of the content and presentation of information to be disclosed at pre-contractual level in the sectoral documentation referred to in Article 6(3) of SFDR.

For financial products that make sustainable investments, this chapter also lays down requirements on compliance with the 'do no significant harm' principle.³



The report contained in Annex I must also cover information on whether the investments are aligned with the OECD Guidelines for Multinational Enterprises⁴ and the UN Guiding Principles on Business and Human Rights,⁵ as set out in the eight fundamental conventions identified in the Declaration of the International Labour Organisation on Fundamental Principles and Rights at Work and the International Bill of Human Rights.⁶

In addition, Chapter III specifies provisions on additional items of disclosure where the financial product designates an index as a reference benchmark, as well as specifying rules on pre-contractual disclosures by financial products referred to in the first paragraphs of Articles 5 and 6 of the Taxonomy Regulation concerning the identification of the environmental objectives that the financial products contribute to.

Articles 14–22 provide additional information and look at the following areas:

Promotion of environmental or social characteristics

- Presentation by FMPs of the pre-contractual information to be disclosed under Articles 8(1), (2) and (2a) of the SFDR;
- Sustainable investment information in the asset allocation section for financial products that promote environmental characteristics;
- Sustainable investment information in the asset allocation section for financial products that promote social characteristics; and
- Calculation of the degree to which investments are in environmentally sustainable economic activities.

Sustainable investment as objective

- Presentation by FMPs of pre-contractual information for financial products to be disclosed under Article 9, paragraphs 1 to 4a of the SFDR; and
- Sustainable investment information for financial products with the objective of sustainable investment.

Financial products with investment options

- Financial products with one or more underlying investment options that qualify those financial products as financial products that promote environmental or social characteristics;
- Financial products with underlying investment options that all have sustainable investment as their objective; and
- Information on underlying investment options that have sustainable investment as their objective and are not themselves financial products.

Website product disclosure

Chapter IV of the Delegated Regulation lays down the rules on website disclosures on financial products referred to in Articles 8(1) to 2(a) and 9(1) to (4a) of the SFDR. It sets out the details of the content and presentation of the information that FMPs must publicly disclose on their website for these financial products.

The chapter further lists out items to be included in the disclosure, focusing on the methodology and any screening criteria employed and the data sources used, and where and how the FMPs publish the information on their website, including the requirement to publish a two-page summary.

Chapter IV contains Articles 23–36 covering the following:

Website product disclosure for financial products that promote environmental or social characteristics

- Product disclosure for financial products that promote environmental or social characteristics;
- Summary;
- No sustainable investment objective;
- Environmental or social characteristics of the financial product;
- Investment strategy;
- Proportion of investments;
- Monitoring of environmental or social characteristics;
- Methodologies for environmental or social characteristics;
- Data sources and processing;
- Limitations to methodologies and data;
- Due diligence;
- Engagement policies; and
- Designated reference benchmark.



Then Articles 37-49 covering the following:

Website product disclosure for financial products that have sustainable investments as their objective

- Summary;
- No significant harm to the sustainable investment objective;
- Sustainable investment objective of the financial product;
- Investment strategy;
- Proportion of investments;
- Monitoring of the sustainable investment objective;
- Methodologies;
- Data sources and processing;
- Limitation to methodologies and data;
- Due diligence;
- Engagement policies; and
- Attainment of the sustainable investment objective;

Product disclosures in periodic reports

Chapter V sets out rules for product-level periodic disclosures by financial products referred to in Articles 8(1) to (2a) and 9(1) to (4a) of the SFDR. These disclosures must use mandatory templates set out in Annexes IV and V.

A list of items to be included in the reporting are provided, focusing on the financial product's success in meeting its environmental or social characteristics, or in the attainment of its sustainable investment objective. The disclosures require a historical comparison, covering up to five reference periods, and the disclosure of the top fifteen investments made during a particular reference period.

In addition, Chapter V lays down rules on periodic disclosures by financial products referred to in the first paragraphs of Articles 5 and 6 of the Taxonomy Regulation concerning the identification of the environmental objective(s) the financial products contribute to. The extent to which economic activities the financial product invested in qualify as environmentally sustainable are shown in graphical representations of key performance indicators.

Chapter V finally lays out further details under Articles 51-57 which look at the presentation and content requirements for periodic reports:

For promotion of environmental or social characteristics

- Attainment of the environmental or social characteristics promoted by the financial products;
- Top investments;
- Asset allocation;
- Proportion of investments in different economic sectors and sub-sectors;

- Information on investments in environmentally sustainable economic activities;
- Information for financial products that promote social characteristics; and
- Sustainable performance of the index designated as a benchmark.

Articles 58-66 then go on to look at financial products that have sustainable investment as an objective, including:

- Presentation and content requirements for periodic reports for financial products that have a sustainable investment in their objective;
- Attainment of the sustainable investment objective of the financial product;
- Top investments;
- Proportion of sustainability-related investments;
- Information on sustainable investments;
- Sustainable performance of the index designated as a benchmark for the sustainable objective;
- Historical comparisons for periodic reports;
- Financial products with one or more underlying investment options that qualify those financial products as financial products that promote environmental or social characteristics; and
- Financial products with underlying investment options.

Whilst Article 67 looks at information on underlying investment options that have sustainable investment as their objective but are not themselves financial products.



What the annexes cover

- 1** **Annex 1**
 Template and definitions for the principal adverse sustainability impacts statement; Table 1 on Statement on principal adverse impacts of investment decisions on sustainability factors; Table 2 on Additional climate and other environment-related indicators; and Table 3 on Additional indicators for social and employee, respect for human rights, anti-corruption and anti-bribery matters.
- 2** **Annex 2**
 Template for pre-contractual disclosure for the financial products referred to in Article 8, paragraphs 1, 2 and 2a of SFDR and Article 6, first paragraph of Taxonomy Regulation. Relating to environmental and/or social characteristics.
- 3** **Annex 3**
 Template for pre-contractual disclosure for the financial products referred to in Article 9, paragraphs 1 to 4a of SFDR and Article 5, first paragraph of Taxonomy Regulation. Relating to sustainable investment objective.
- 4** **Annex 4**
 Template for periodic disclosure for the financial products referred to in Article 8, paragraphs 1,2 and 2a of SFDR and Article 6, first paragraph of Taxonomy Regulation. Relating to environmental and/or social characteristics.
- 5** **Annex 5**
 Template for periodic disclosure for the financial products referred to in Article 9, paragraphs 1 to 4a of SFDR and Article 5, first paragraph of Taxonomy Regulation. Relating to sustainable investment objective.



Next steps

The Delegated Regulation requirements will now be subject to scrutiny by the European Parliament and the Council.

Could the RTS criteria lead to more critical examination of asset manager disclosures, particularly in cases where a fund is claiming article eight or nine classification?

Several regulators have clearly articulated their concerns over the potential for greenwashing, so firms will need to review the RTS in detail to make sure that no adjustments are required, following the additional clarity that is now available.

The Delegated Regulation will apply from 1 January 2023.

¹ Delegated Regulation.

² 3 February 2021 ESA's submitted draft regulatory technical standards (RTS) to the EC combining draft RTS developed under Articles 2a, 4(6) and (7), 8(3), 9(5), 10(2) and 11 (4) of SFDR. 22 October 2021, ESAs submitted draft RTS to the EC combining draft RTS developed under Articles 8(4), 9(6) and 11(5) of the SFDR.

³ Referred to in Article 2, point (17) of SFDR.

⁴ <https://www.oecd.org/corporate/mne/>.

⁵ https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

⁶ <https://www.ilo.org/declaration/lang-en/index.htm>.

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