

ESG: European Regulators Confirm Approach to SFDR Compliance from 10 March 2021

March 3, 2021

The European Supervisory Authorities (ESAs) have published a Supervisory Statement to clarify the application of the Sustainable Finance Disclosure Regulation (SFDR)¹ in anticipation of the requirements applying in the European Economic Area (EEA) from 10 March 2021. The Supervisory Statement does not impose new requirements on financial market participants and advisers, but confirms the industry approach to using the draft Regulatory Technical Standards (RTS) as a reference point in their compliance efforts for the 10 March 2021 deadline.

The RTS implement the more detailed requirements of the SFDR through secondary rules, which, due to the disruption caused by COVID-19, will not be finalised by 10 March 2021, as originally intended.² The ESAs have proposed applying the RTS from 1 January 2022.

See [Annex 1](#) of this client alert for an adapted version of the table published by the ESAs with the relevant application dates under the SFDR and the Taxonomy Regulation.

The ESAs have stated that the draft RTS should be used as a reference point for the following SFDR requirements:

- Disclosure of information on compliance with the “do no significant harm” principle for funds or portfolios that make sustainable investments.³
- Investment manager-level disclosures on the adverse sustainability impacts of investment decisions.⁴
- Investment manager-level website disclosures in relation to each fund or portfolio that either promotes environmental or social characteristics, or makes sustainable investments.⁵
- Product-level precontractual disclosures for funds or portfolios that promote environmental or social characteristics⁶, or makes sustainable investments.⁷

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Approach to first-time periodic reporting for Articles 8 and 9 funds or portfolios

The ESAs have also proposed a change to the commencement date of first-time periodic reporting by Article 8 and 9 funds or portfolios should the draft RTS not be adopted in time to give financial market participants at least six months to prepare for compliance with the periodic reporting requirements of Chapter V of the RTS.

The proposed change would apply the RTS to the periodic reports published in or after 2022 in relation to reference periods starting from 1 January 2022, while the periodic reports published in 2022 in relation to reference periods starting before 1 January 2022 would apply the high level and principle-based-requirements of Article 11(1) of the SFDR.

¹ Joint ESA Supervisory Statement on the application of the Sustainable Finance Disclosure Regulation, 25 February 2021 ([here](#)).

² For more information see: ESG: New Disclosure Rules for Investment Managers, Akin Gump Financial Regulatory Alert, 25 November 2020 (See [here](#)); and SFDR – Revised Secondary ESG Disclosure Measures, Akin Gump Financial Regulatory Alert, 11 February 2021 (See [here](#)).

³ Article 2a SFDR.

⁴ Article 4 SFDR.

⁵ Article 10 SFDR.

⁶ Article 8 SFDR.

⁷Article 9 SFDR.

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Annex 1

Investment Manager-Level Disclosures		
Requirement	SFDR Application Date	RTS Application Date
Sustainability risks policy. Article 3 SFDR	10 March 2021	N/A (i.e., No RTS)
Principal adverse impacts (PAI) of investment decisions on sustainability factors. Article 4(1)(a), 4(2), 4(3), 4(4), 4(5)(a) SFDR	10 March 2021 30 June 2021 for investment managers with more than 500 employees.	Applies from 1 January 2022, with first reference period under the RTS being 1 January 2022 to 31 December 2022, and the first statement covering that reference period required to be published no later than 30 June 2023. The second statement to contain information relating to reference periods (including PAI indicators in Table 1 of Annex 1 of the RTS) by 30 June each year with a reference period of the previous calendar year.
No consideration of PAI at entity level. Article 4(1)(b), 4(5)(b) SFDR	10 March 2021	1 January 2022
Consistency of remuneration policies with the integration of sustainability risks. Article 5 SFDR	10 March 2021	N/A
Review of disclosures. Article 12 SFDR	10 March 2021	N/A
Marketing communications not contradicting disclosures in SFDR. Article 13 SFDR	10 March 2021	Optional ITS – Option to develop ITS on standardised presentation of marketing communication has not been exercised by the ESAs to date.

Fund- or Portfolio-Level Disclosures		
Requirement	SFDR Application Date	RTS Application Date
Integration of sustainability risks into investment decisions and investment advice. Article 6 SFDR	10 March 2021	N/A
Consideration of PAI at fund/portfolio level. Article 7(1) SFDR	30 December 2022	N/A
No consideration of PAI at fund/portfolio level. Article 7(2) SFDR	10 March 2021	N/A
Precontractual disclosures for funds/portfolios promoting environmental or social characteristics. Article 8 SFDR and Article 6 Taxonomy Regulation	(i) 10 March 2021 (Article 8(1) and (2) SFDR). (ii) 1 January 2022 for the taxonomy-related disclosures for environmental objectives referred to in Article 9(a)–(b) Taxonomy Regulation (Article 8(2a) SFDR). (iii) 1 January 2023 for the taxonomy-related disclosures for environmental objectives referred to in Article 9(c)–(f) Taxonomy Regulation (Article 8(2a) SFDR).	(i) 1 January 2022. (ii) 1 January 2022 for the taxonomy-related disclosures for environmental objectives referred to in Article 9(a)–(b) Taxonomy Regulation. (iii) 1 January 2023 for the taxonomy-related disclosures for environmental objectives referred to in Article 9(c)–(f) Taxonomy Regulation.
Precontractual disclosures for funds/portfolios with a “sustainable investment” objective. Article 9 SFDR and Article 5 Taxonomy Regulation	(i) 10 March 2021 (Article 9(1), (2) and (3) SFDR). (ii) 1 January 2022 for the taxonomy-related disclosures for environmental objectives referred to in Article 9(a)–	(i) 1 January 2022. (ii) 1 January 2022 for the taxonomy-related disclosures for environmental objectives referred to in Article 9(a)–(b) Taxonomy Regulation.

Fund- or Portfolio-Level Disclosures		
Requirement	SFDR Application Date	RTS Application Date
	(b) Taxonomy Regulation (Article 9(4a) SFDR). (iii) 1 January 2023 for the taxonomy-related disclosures for environmental objectives referred to in Article 9(c)–(f) Taxonomy Regulation (Article 9(4a) SFDR).	(iii) 1 January 2023 for the taxonomy-related disclosures for environmental objectives referred to in Article 9(c)–(f) Taxonomy Regulation.
Website disclosures for Article 8 and 9 SFDR funds/portfolios. Article 10 SFDR	10 March 2021	1 January 2022
Periodic reporting disclosures for Article 8 and 9 SFDR funds/portfolios and Article 5 and 6 Taxonomy Regulation funds/portfolios. Article 11 SFDR, Articles 5 and 6 Taxonomy Regulation	(i) Periodic reports issued from 1 January 2022, including the taxonomy-related disclosures for environmental objectives referred to in Article 9(a)–(b) Taxonomy Regulation (Article 11(1) SFDR). (ii) 1 January 2023 for the taxonomy-related disclosures for environmental objectives referred to in Article 9(c)–(f) Taxonomy Regulation (Article 11(1)(c) and (d) SFDR).	(i) Periodic reports issued from 1 January 2022. (ii) 1 January 2023 for the taxonomy-related disclosures for environmental objectives referred to in Article 9(c)–(f) Taxonomy Regulation.