

JC 2021 06

25 February 2021

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”) within the period from 10 March 2021 to the application date of the Regulatory Technical Standards (“RTS”) on the content, methodologies and presentation of sustainability-related disclosures under empowerments in Articles 2a(3), 4(6) and (7), 8(3), 9(5), 10(2) and 11(4) 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. 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 SFDR¹, while 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, the application of the RTS will be delayed to a later date.
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*”.
5. In order to provide financial market participants and financial advisers with sufficient time to gather the information necessary and adjust their practices to apply the specific requirements of the RTS, and in order to provide for the alignment of the application of the RTS with the

¹ Letter (2020)5678036

https://www.esma.europa.eu/sites/default/files/library/eba_bs_2020_633_letter_to_the_esas_on_sfdr.pdf.

application of the amendments in [Regulation \(EU\) 2020/852](#) (Taxonomy Regulation, hereinafter referred to as “TR”) to the SFDR as well as the application of periodic reporting in the SFDR, the ESAs have proposed in their draft RTS to delay the application date of the RTS to 1 January 2022².

6. With regard to the detailed provisions in the RTS, the proposed delay would also allow 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 market participants and financial advisers with those requirements.
7. As most of the provisions on sustainability-related disclosures laid down in the SFDR apply from 10 March 2021, 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.
8. 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 report that has been submitted to the European Commission on 4 February 2021. The draft RTS can be used as a reference for the purposes of applying the provisions of Articles 2a, 4, 8, 9, and 10 of the SFDR in the interim period.
9. 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 may object to the draft RTS within a period of three months from the date of notification of the RTS adopted by the Commission³. Therefore, the final RTS may be different to the draft RTS in the ESAs’ final report.
10. Nevertheless, the ESAs recommend national competent authorities to encourage financial market participants and financial advisers to use the interim period from 10 March 2021 until 1 January 2022 to prepare for the application of the RTS.
11. 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.

² Except for the reporting on Scope 3 GHG emissions in Tables 1 and 2 of Annex I of the RTS, which the ESAs propose should apply from 1 January 2023.

³ 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) SFDR⁴ who must start reporting from 30 June 2021, the additional detail specified by the entity-level ‘principal adverse sustainability impacts statement’ set out in the RTS is to be phased in. In particular, the RTS establishes a framework of reporting on principal adverse impacts by 30 June each year with a reference period of the previous calendar year. As the ESAs propose that the RTS should apply from 1 January 2022, this means that the additional detail specified in the RTS must be reported in accordance with the RTS from that date. However, where a financial market participant publishes the principal adverse sustainability impacts statement in accordance with the RTS for the first time, the RTS does not require the disclosure of information relating to a previous reference period (the section in Table 1 of Annex I “Description of principal adverse sustainability impacts”). Information that must be published in the first statement not related to reference periods includes the following sections in Table 1 of Annex I: “Summary”, “Description of policies to identify and prioritise adverse sustainability impacts”, “Engagement policies” and “References to international standards”. This means that 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.

Application timeline for products’ periodic reporting

2. Periodic reports referred to in Article 11(2) of the SFDR must comply with the requirements laid down in that Article from 1 January 2022.⁵ This means that financial market participants must draw up in 2022 respective periodic reports referred to in Article 11(2) in compliance with the SFDR, irrespective of reference periods. For the requirements relating to those periodic reports, the draft RTS can also be used as a reference for the purposes of preparing for the application of Article 11 of the SFDR.
3. The ESAs have not provided for any different application deadlines for the application of the RTS for periodic product reporting (Chapter V of the RTS). This means that Chapter V of the

⁴ 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.

⁵ 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. The ESAs will soon issue a Consultation Paper in relation to these requirements as referred to in paragraph 5 of this Annex.

RTS applies to periodic product reports issued under Article 11 at the same time as the application of SFDR outlined in paragraph 2 above. However, the ESAs would like to draw the Commission's attention to the potential for the application date of 1 January 2022 to be burdensome for financial market participants in relation to the detailed content and presentation requirements for sustainability-related information in periodic reports set out in Chapter V of the RTS. The ESAs note that the majority of those periodic reports have annual reference periods.

4. In view of this, in case the RTS are not adopted sufficiently early to allow at least six months to enable financial market participants to gather the necessary information and adapt their practices to comply with Chapter V of the RTS, the ESAs recommend that the Commission specifies that Chapter V of the RTS applies to periodic reports with reference periods starting from 1 January 2022. In that way, the requirements of Chapter V of the RTS would only apply to 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 in Article 11(1) of the SFDR.
5. The ESAs have provided below a table laying out the implementation timelines of the various disclosure obligations in SFDR and the TR. The SFDR RTS will be amended by forthcoming RTS under new empowerments added to the SFDR by the TR, which will include additional disclosures for investments in Taxonomy-aligned activities.

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)	<p>1 January 2022. As set out in Article 4 RTS, the first statement to contain non-reference period information. Second statement to contain information relating to reference periods (including PAI indicators in Table 1 of Annex 1) by 30 June each year with a reference period of the previous calendar year.</p> <p>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.</p>

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
					The reporting of GHG Scope 3 emissions applies to reference periods starting from 1 January 2023.
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 2022
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	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 8 SFDR and Article 6 TR	Financial product	Pre-contractual disclosures for products promoting environmental or social characteristics	Yes	<p>(1) 10 March 2021 (Article 8(1) and (2) SFDR)</p> <p>(2) 1 January 2022 for the taxonomy-related disclosures for environmental objectives referred to in Article 9(a)-(b) TR (Article 8(2a) SFDR)</p> <p>(3) 1 January 2023 for the taxonomy-related disclosures for environmental objectives referred to in Article 9(c)-(f) TR (Article 8(2a) SFDR)</p>	<p>(1) 1 January 2022</p> <p>(2) 1 January 2022 for the taxonomy-related disclosures for environmental objectives referred to in Article 9(a)-(b) TR</p> <p>(3) 1 January 2023 for the taxonomy-related disclosures for environmental objectives referred to in Article 9(c)-(f) TR</p>
Article 9 SFDR and Article 5 TR	Financial product	Pre-contractual disclosures for products with sustainable investment objective	Yes	<p>(1) 10 March 2021 (Article 9(1), (2) and (3) SFDR)</p>	<p>(1) 1 January 2022</p>

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
				<p>(2) 1 January 2022 for the taxonomy-related disclosures for environmental objectives referred to in Article 9(a)-(b) TR (Article 9(4a) SFDR)</p> <p>(3) 1 January 2023 for the taxonomy-related disclosures for environmental objectives referred to in Article 9(c)-(f) TR (Article 9(4a) SFDR)</p>	<p>(2) 1 January 2022 for the taxonomy-related disclosures for environmental objectives referred to in Article 9(a)-(b) TR</p> <p>(3) 1 January 2023 for the taxonomy-related disclosures for environmental objectives referred to in Article 9(c)-(f) TR</p>
Article 10 SFDR	Financial product	Website disclosures for Article 8 and 9 SFDR products	Yes	10 March 2021	1 January 2022

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 11 SFDR, Article 5-6 TR	Financial product	Periodic reporting disclosures for Article 8 and 9 SFDR products and Article 5 and 6 TR products	Yes	<p>(1) Periodic reports 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)</p> <p>(2) 1 January 2023 for the taxonomy-related disclosures for environmental objectives referred to in Article 9(c)-(f) TR (Article 11(1)(c) and (d) SFDR)</p>	<p>(1) Periodic reports issued from 1 January 2022⁶</p> <p>(2) 1 January 2023 for the taxonomy-related disclosures for environmental objectives referred to in Article 9(c)-(f) TR</p>

⁶ See paragraphs 2-4 in the Annex above for consideration of the application of the RTS provisions in Chapter V to periodic reports issued with reference periods in 2021.

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 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