

2 June 2022

# EU SUSTAINABLE FINANCE UPDATES

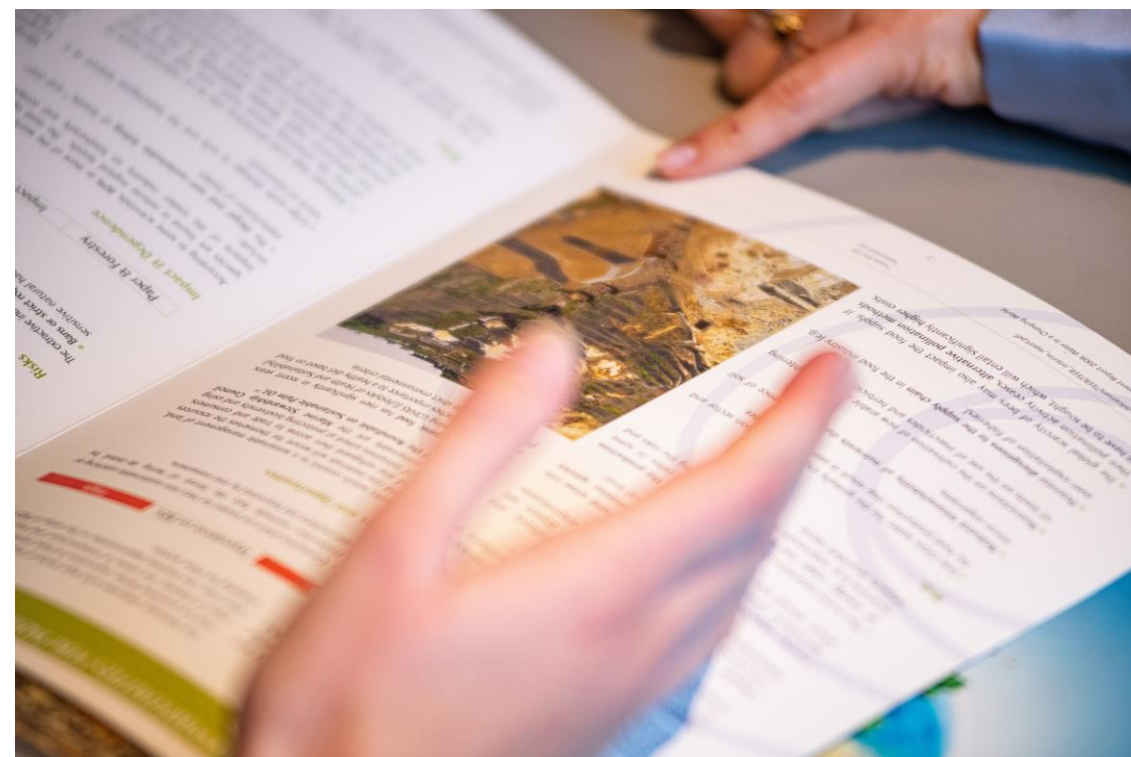
**Eurosif**  
The European Sustainable Investment Forum

# Agenda of this edition

Thursday 2 June 2022

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- **SFDR update**
  - ✓ COM mandate to ESAs to develop additional Taxonomy-related product disclosures
  - ✓ COM mandate to ESAs to further develop PAIs
  - ✓ Q&A providing interpretation of SFDR Taxonomy-related product disclosures
- **EU Green Bond Standard update**
- **Update on CSRD & EU Taxonomy**



# SFDR – New mandates for the ESAs

## A FIRST MANDATE RELATED TO NATURAL GAS & NUCLEAR ENERGY

- On 8<sup>th</sup> April, the European Commission wrote to the European Supervisory Authorities mandating that they develop additional Taxonomy-related product disclosures under SFDR.
- The Commission has instructed the ESAs to amend and supplement Taxonomy-related product disclosures so as to ensure they reflect exposures to Taxonomy-compliant natural gas & nuclear energy.
- The additional disclosures have been necessitated by the Taxonomy Complementary DA (which will include gas & nuclear in the Taxonomy) which is currently subject to scrutiny by the co-legislators.
- The ESAs have **until 30<sup>th</sup> September 2022** to deliver the amendments to the Taxonomy-related product disclosures. They may use a special procedure given the urgent need to supplement the product disclosures.





# SFDR – New mandates for the ESAs

## A SECOND MANDATE ON THE EXTENSION OF THE PAIs

- On 11<sup>th</sup> April, the European Commission mandated the ESAs to further develop the Principal Adverse Impact (PAI) indicators under SFDR.
- The Commission. has instructed the ESAs to;
  - (i) streamline the regulatory framework;
  - (ii) consider extending the list of universal/mandatory PAI indicators, and;
  - (iii) refine the definitions, content, calculation methodologies and metrics for each of the existing PAIs.
- In addition, the Commission has requested that the ESAs further develop SFDR product disclosures on decarbonisation targets, including intermediary targets and milestones, and, where relevant, actions pursued.
- The ESAs have been given 12 months to satisfy the Commission’s request.



# SFDR – Q&A interpreting SFDR provisions

## ESAs REQUEST FOR CLARIFICATIONS ON INTERPRETING SFDR

- On 13<sup>th</sup> May, the ESAs forwarded questions on the interpretation of SFDR to the European Commission.
- Q10 was the most striking of the questions – effectively asking the Commission whether Article 8 & 9 products should disclose their level of Taxonomy-alignment in cases where they pursue environmental objectives within the meaning of Article 2(17) or social objectives.
- The Commission responded on 17<sup>th</sup> May, within a week of receiving the questions from the ESAs.
- The Commission’s response with respect to Taxonomy-related product disclosures was particularly notable. However, it has unfortunately created a degree of confusion, particularly around the use of estimates for determining the Taxonomy-alignment of investments and potentially contradicts prior statements by the ESAs.

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ANNEX

**A. Questions related to 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 (SFDR)**

ESA: ESMA  
Question ID: not applicable  
Regulation reference: Regulation (EU) 2019/2088 (SFDR)  
Topic: sustainable finance disclosures  
Article: Article 4(1)(b), Article 4, paragraphs 3 or 4, Article 7, Article 8, Article 9

**1. Question**  
Is it possible for financial market participants that are below the threshold set by Article 4(3) and (4) of Regulation (EU) 2019/2088 and choose not to consider adverse impacts of investment decisions on sustainability factors at entity level (Article 4(1)(b) of Regulation (EU) 2019/2088) to indicate that they do consider principal adverse impacts (PAI) at product level only for a certain subset of financial products? In other words, can a financial market participant not consider PAI at entity level but nevertheless consider PAI under Article 7 of Regulation (EU) 2019/2088 for some of the financial products it manages, and if they do so, can they disclose this under Article 4(1)(b) of Regulation (EU) 2019/2088?

**2. Answer**  
A financial market participant that

- is below the thresholds laid down in Article 4, paragraph 3 or 4, of Regulation (EU) 2019/2088; and
- does not consider adverse impacts of investment decisions on sustainability factors at entity level; and
- publishes and maintains on its website clear reasons for why it does not consider such adverse impacts, in accordance with Article 4(1), point (b), of that Regulation,

may, notwithstanding the criteria set out in Article 7(1), first subparagraph, of Regulation (EU) 2019/2088, manufacture a financial product that pursues a reduction of negative externalities caused by the investments underlying that product.

Financial market participants are responsible for assessing which financial products must comply with the provisions of Regulation (EU) 2019/2088; in consequence, where a financial product falls under Article 8 or Article 9 of Regulation (EU) 2019/2088, they must ensure compliance with the applicable disclosure requirements. Moreover, financial market participants shall include in the pre-contractual disclosures referred to in Article 6(1) and (3), and in the periodic reports referred to in Article 11(2) of Regulation (EU) 2019/2088 information explaining how it considers or has considered the financial product’s principal adverse impacts on sustainability factors.

Financial market participants must, where relevant, include the information referred to in Article 4(1), point (b), of Regulation (EU) 2019/2088 setting out clear reasons as to whether and when they intend to consider such adverse impacts at entity level. A financial product pursuing a reduction of negative externalities caused by the investments underlying that product must not be part of such entity level information.

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# SFDR – Q&A interpreting SFDR provisions

## COMMISSION CLARIFICATIONS CONCERNING TAXONOMY-RELATED PRODUCT DISCLOSURES

- FMPs, as per Art. 5 & 6 of the Taxonomy Regulation, must disclose the extent to which their Art. 8 & 9 products are Taxonomy-aligned regardless of whether they have made a commitment to pursue environmental objectives within the meaning of Art. 2(17) SFDR or, in the case of Art. 9 products, pursue only social objectives;
- **On data use**, if data on the level of Taxonomy-alignment is unreliable, FMPs should indicate that they have zero-alignment;
- **If a product has low or zero-alignment**, FMPs are not permitted to explain the low or zero-alignment by referring to the lack of reliable data;
- Narrative explanations must also avoid ‘room for ambiguity’ or casting doubt as to the reliability of the Taxonomy-alignment figure.
- Nevertheless, in ‘exceptional cases’, estimates and ‘complementary assessments’ can be used to approximate the Taxonomy-alignment of investee companies not subject to Taxonomy disclosures.
- **If estimates are used**, FMPs should explain the basis for their conclusions and why use of estimates was necessary.

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# SFDR – Q&A interpreting SFDR provisions

## OUTSTANDING QUESTIONS & ANALYSIS

The latest interpretation of Taxonomy-related product disclosure requirements provided by the Commission has raised additional questions;

- In the ESAs’ updated Supervisory Statement of 25 March 2022, **use of estimates** to determine the extent of Taxonomy-alignment was expressly prohibited. Instead, the ESAs insisted that ‘equivalent information’ had to be obtained (as per Article 16(2)(b) of the RTS). FMPs would then have to explain where they obtained said ‘equivalent information’. The Commission appears to have negated the ESAs’ updated supervisory statement.
- How can FMPs explain the need to **use estimates without referring to the lack of reliable** (publicly reported) data on Taxonomy-alignment if doing so would invariably cast doubt as to the accuracy of the disclosed Taxonomy-alignment figure?
- If FMPs are unable to explain why their Taxonomy-alignment figure is imperfect, they will likely **indicate zero-alignment**.
- If FMPs indicate zero-alignment, would doing so render the first criterion for determining **client sustainability preferences under MiFID II** unworkable?

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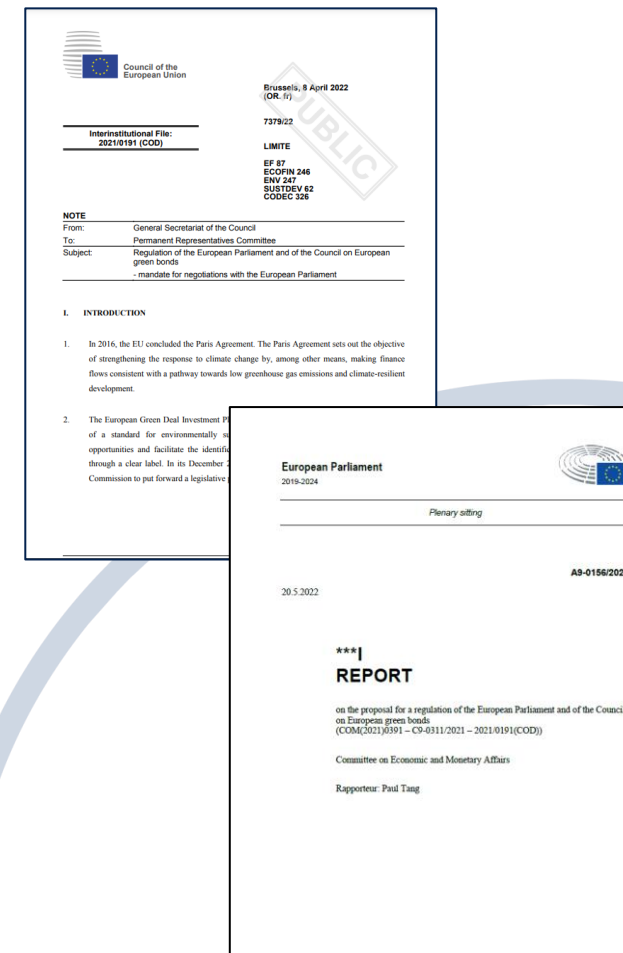
# EU Green Bond Standard update

## PROCESS

- On 6th July 2021, the EU Commission tabled a proposal for an EU Green Bond Standard (EU GBS) regulation
- The EU Parliament and the Council have been determining their respective positions & amending the Commission proposal accordingly
- On 8th April, the Council reached a [General Approach](#) (a compromise among the Member States) on the Commission proposal
- On 16th May, the ECON Committee adopted its negotiation position ([Report](#))

## Next steps

- The ECON report will be formally voted in the plenary session in the first week of June
- Trilogue to start in mid-June / first-half of July





# EU Green Bond Standard update

## The ECON Committee report: Key contents

- **Wider scope & broader objective** – Transparency requirements are introduced for **all bonds** marketed in the EU as “**environmentally sustainable**”, and “**sustainability-linked**” (SLB)
- Among the **disclosure requirements** (environmentally sustainable bonds) – Consideration of principal adverse impact on sustainability factors & **Taxonomy-alignment** of the use of proceeds
- **Increased transparency for gas and nuclear** – EU GBS that allocate proceeds to nuclear or gas activities (if these are classified as transitional in the EU Taxonomy) must declare this on the first page of the factsheet
- **New requirements on issuers** – All EU GBS and SLB issuers subject to the CSRD are required to have audited **transition plans** aligned with climate neutrality by 2050; issuers from tax heavens can not issue EU GBS
- **Stronger supervision** – Strengthened rules on conflicts of interest of external reviewers; national competent authorities can ban issuers from issuing EU GBSs for 1 year if they fail to comply with the obligations to publish relevant documents (factsheet, allocation report, impact report, etc.)

# CSRD & EU Taxonomy

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## CSRD - Trilogues will continue

- Initially, legislative negotiations on the CSRD were due to be concluded after three trilogues. The third trilogue was scheduled for 19<sup>th</sup> May.
- However, a fourth trilogue was arranged on 30<sup>th</sup> May to address disagreements over;
  - (a) The treatment of subsidiaries;
  - (b) The inclusion of listed SMEs in scope, and;
  - (c) The separation of financial & ESG auditing functions.
- The trilogue scheduled for 30<sup>th</sup> May was cancelled, in part due to frustration at the lack of compromise and will be postponed. The date is still to be decided.

## EU Taxonomy - CDA under scrutiny period

- As a reminder, the Commission formally adopted the Complementary Delegated Act (CDA) on 9<sup>th</sup> March 2022, triggering the start of a 4-month scrutiny period during which the Council or Parliament could object.
- In Council, Member States opposed to the CDA could not reach a majority.
- In Parliament, a joint ECON-ENVI committee vote on an objection to the CDA will be scheduled between 14<sup>th</sup> & 16<sup>th</sup> June.
- In Committee, a majority of 74 MEPs will be required for the objection to succeed. At present, 55 MEPs have expressed their intention to object out of a total of 147. 25 MEPs are still undecided.

# Thank you!

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