



SUSTAINABLE FINANCE INSIGHTS SERIES

Regulation on sustainability-related disclosures in the financial services sector



Right by you in Luxembourg





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DISCLAIMER

This document is intended only as a general discussion of the topics with which it deals. It should not be regarded as legal advice. If you would like to know more about the topics covered in this newsletter or our services please contact us.



In December 2018, the European Commission mandated a group of social, financial and academic experts to develop a strategy on sustainable finance which incorporates Environmental, Social and Governance (ESG) considerations into investment decisions and ensures that clients are accurately informed.

To implement the sustainable strategy, the European Commission adopted a package of proposed measures:

- the Regulation on the establishment of a framework to facilitate sustainable investment (the Taxonomy Regulation),
- the Regulation amending the benchmark regulation (the low carbon benchmark regulation),
- the Regulation on disclosures relating to sustainable investments and sustainability risks and amending directive (EU) 2016/2341.

In this respect , the European Parliament and the Council adopted on 9 December 2019 the Regulation (UE) 2019/2088 on sustainability-related disclosures in the financial services sector (hereinafter the “Regulation”).

The Regulation aims at establishing harmonised rules on transparency to be applied by financial market participants. In this respect they must systematically consider and integrate sustainability risks and performance into investment decision-making or advisory processes and provide investors with sustainability –related information on the financial products they offer or advise on.

By “**sustainable investment**” the Regulation means:

- an investment in an economic activity that contributes to an environmental objective, as measured, for example, by key resource efficiency indicators on the use of energy, renewable energy, raw materials, water and land, on the production of waste, and greenhouse gas emissions, or on its impact on biodiversity and the circular economy, or
- an investment in an economic activity that contributes to a social objective, in particular an investment that contributes to tackling inequality or that fosters social cohesion, social integration and labour relations, or
- an investment in human capital or economically or socially disadvantaged communities,

provided that :

- such investments do not significantly harm any of those objectives and
- that the investee companies follow good governance practices, in particular with respect to sound management structures, employee relations, remuneration of staff and tax compliance.

FRAMEWORK

The Regulation shall be applied to financial market participants and financial advisers. According to the Regulation, “**financial market participants**” include:

- an investment firm which provides portfolio management;
- an alternative investment fund manager (AIFM);

- a manager of a qualifying venture capital fund¹;
- a manager of a qualifying social entrepreneurship fund²;
- a management company of an undertaking for collective investment in transferable securities (UCITS management company); or
- a credit institution which provides portfolio management;

and “**financial advisers**” include:

- an investment firm which provides investment advice;
- an AIFM which provides investment advice³; or
- a UCITS management company which provides investment advice⁴.

MEASURES

The Regulation foresees disclosure measures which consist, for financial market participants and/or financial advisers, in publishing some information on their websites and including additional information in documents such as their remuneration policies, pre-contractual disclosures or periodic reports. Information published has to be kept up to date and in case of amendment of such information, a clear explanation of such amendment shall be published on the same website.

Information to be published

- Art. 3** ➤ *Financial market participants* and/or financial advisers shall **publish** on their websites information about their policies on the integration of sustainability risks (i) in their investment decision-making process and (ii) in their investment advice or insurance advice.
- Art. 4** ➤ From the date of application of the Regulation being 10 March 2021, financial market participants shall publish and maintain on their websites in those cases where they do consider the adverse impacts of investment decisions on sustainability factors, a statement on the due diligence policies applied with respect to these principal adverse impacts, taking account of their size, nature and the scale of their activities and the types of their financial products or where consideration is not given to the adverse impacts of investment decisions on sustainable factors: clear reasons for this (and, where relevant, information as to whether and when they intend to do so).
- By way of derogation, (i) financial market participants exceeding an average number of 500 employees during the financial year or (ii) financial market participants which are parent undertakings of a large group exceeding on a consolidated basis, an average number of 500 employees during the financial year shall, from 30 June 2021, publish and maintain on their website a statement on their due diligence policies with respect to the principal adverse impacts of investment decisions on sustainability.

¹ registered in accordance with Article 14 of Regulation (EU) No 345/2013.

² registered in accordance with Article 15 of Regulation (EU) No 346/2013.

³ in accordance with point (b)(i) of Article 6(4) of Directive 2011/61/EU.

⁴ in accordance with point (b)(i) of Article 6(3) of Directive 2009/65/EC.

- Art. 4** ➤ Financial Advisers shall publish and maintain on their websites information as to whether they consider in their investment advice or insurance advice the principal adverse impacts on sustainability factors or information as to why they do not consider such adverse impacts including information as to whether and when they intend to consider such adverse impacts.
- Art. 10** ➤ Financial market participants shall publish and maintain information on their websites, for each financial product promoting environmental or social characteristics, or a combination of those characteristics, each financial product that has sustainable investment as its objective, and each financial product that has a reduction of carbon emissions as its objective a description of the environmental or social characteristics or the sustainable investment objective and information on the methodologies used to assess, measure and monitor the environmental or social characteristics or the impact of the sustainable investments selected for the financial product.

Information to disclosed: Financial market participants and/or financial advisers shall

- Art. 5** ➤ Include in their remuneration policies information on how such policies are consistent with the integration of sustainability risks, (and shall publish that information on their websites).
- Art. 6** ➤ Include in their pre-contractual disclosures a description of the manner in which sustainability risks are integrated into their investment decisions/ investment or insurance advice. Where financial market participants or financial advisers deem sustainability risks not to be relevant, a clear and concise explanation of the reasons therefore must be included.
- Include in their pre-contractual disclosures a description of the results of the assessment of the likely impacts of sustainability risks on the returns of the financial products they make available or advise on. The Regulation provides the manner by which this information shall be published (ex: for AIFMs, in the disclosure to investors required pursuant to article 23 (1) of Directive 2011/61/EU).
- Art. 8** ➤ Concerning a financial product that promotes environmental or social characteristics, or a combination of those characteristics, the pre-contractual disclosure shall include information on how those characteristics are met, and, if an index has been designated as a reference benchmark, information on whether and how this index is consistent with those characteristics.
- Art. 9** ➤ Concerning a financial product that has sustainable investment as its objective and for which an index has been designated as a reference benchmark, the pre-contractual disclosure shall include information on how the designated index is aligned with that objective, and an explanation as to why and how the designated index aligned with that objective differs from a broad market index. Where no index has been designated as a reference benchmark, the information to be disclosed shall include an explanation on how that objective is to be attained.
- Art. 9** ➤ Concerning a financial product that has a reduction in carbon emissions as its

objective, the *pre-contractual disclosure* shall include the objective of low carbon emission exposure in view of achieving the long-term global warming objectives of the Paris Agreement.

Moreover, financial market participants shall include in the information to be disclosed an indication of where the methodology used for the calculation of the indices and benchmarks are to be found.

- Art. 11**
- Concerning the transparency of the promotion of environmental or social characteristics and of sustainable investments, where financial market participants make available a financial product promoting environmental or social characteristics they must include information in periodic reports (i), *such as* the extent to which environmental or social characteristics are met or (ii) for a financial product having sustainable investment as its objective, the overall sustainability-related impact of the financial product by means of relevant sustainability indicators and where an index has been designated as a reference benchmark, a comparison between the overall sustainability-related impact of the financial product with the impacts of the designated index and of a broad market index through sustainability indicators.

EBA, EIOPA and ESMA, collectively, the “ESAs”, shall develop regulatory technical standards (RTS) to further specify the content, methodologies and presentation of information in relation to sustainability indicators with regard to climate and other environment-related adverse impacts, to social and employee matters, on respect for human rights, and on anti-corruption and anti-bribery matters, as well as to specify the presentation and content of the information with regard to the promotion of environmental or social characteristics and sustainability investment objectives to be disclosed in pre-contractual documents, annual reports and on websites of financial market participants.

TIMING

The Regulation will enter into force 20 days after its publication in the Official Journal. It applies from March 10, 2021 provided that the provisions regarding disclosure in the periodic reports apply from January 1, 2022. Certain RTS will be required to be presented by the ESAs to the European Commission by December 30, 2020 and others by December 30, 2021.



About BSP

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Building on the synergy of our different professional experiences and the richness of our diverse cultural background, we stand ready to meet our clients' legal needs, no matter how challenging they are.

For more information please browse through our site or contact us at mail@bsp.lu.



Contacts:

 A black and white portrait of Isabel Høg-Jensen, a woman with dark hair, wearing a white button-down shirt, sitting at a table with her hands clasped.	<p>Isabel Høg-Jensen Counsel ihog-jensen@bsp.lu</p>
 A black and white portrait of Evelyn Maher, a woman with dark hair, wearing a dark blazer over a white top, sitting at a table with her hands clasped.	<p>Evelyn Maher <i>Partner</i> emaher@bsp.lu</p>
 A black and white portrait of Claire Jordan-Dandrau, a woman with dark hair, wearing a grey blazer over a white top, sitting at a table with her hands clasped.	<p>Claire Jordan-Dandrau Knowledge Management cjordan-dandrau@bsp.lu</p>



Right by you in Luxembourg

bsp.lu

2, rue Peternelchen | Immeuble C2
L-2370 Howald | Luxembourg
mail@bsp.lu