



The Sustainable Finance Disclosure Regulation (“SFDR”): Overview and Practical Challenges

ALDE/CSY Webinar: Environmental Law and Banking & Financial Law – The regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector and its impact on the Luxembourg financial centre (14 June 2021)

Introduction: SFDR background and current regulatory trends

- From the protection of the environment to the intergation of environmental issues (risks/impact) in financial processes / sustainable transition requires enormous investments and an important involvement of the private sector
- A new regulatory trend initiated by the 2018 EC's Sustainable Finance Action Plan for Growth (COM(2018) 97 final):
 - ✓ the **Disclosures Regulation (EU) 2019/2088** as amended (or “**SFDR**”), and
 - ✓ the **Taxonomy Regulation (EU) 2020/852**
- New **transparency** requirements (for better investors' informed decisions) / new *lex specialis* principals-agents (mandate regime) for ESG financial products (investors new sponsors / *mécènes* of ESG projects)
- Moving regulatory targets/deadlines through 2021 to 2023
- Current uncertainties regarding SFDR Regulatory Technical Standards (“**RTS**” or “Level 2 standards”) specifying “Level 1 requirements”
- A “learning curve” phase for all actors, including EU/national regulators! (cf. SMSG advice to ESMA, May 2021)
- And more to come: the EU Sustainable Finance April (2021) Package

Agenda

- 1) Who and what?
- 2) How to comply and when?
- 3) Current and future challenges

1) Who and what?

Financial market participants (or “FMPs”)

Banking and investment firms sector	<ul style="list-style-type: none">• credit institutions providing portfolio management; and• investment firms providing portfolio management
Investment funds sector	<ul style="list-style-type: none">• management companies of undertakings for collective investment in transferable securities (UCITS ManCos);• alternative investment funds managers (AIFMs);• managers of qualifying venture capital funds registered in accordance with Article 14 of Regulation (EU) No 345/2013 (EuVECA Managers); and• managers of qualifying social entrepreneurship funds registered in accordance with Article 15 of Regulation (EU) No 346/2013 (EuSEF Managers)
Insurance and pension sector	<ul style="list-style-type: none">• insurance undertakings making insurance-based investment products (IBIPs);• institutions for occupational retirement provision (IORP);• manufacturers of pension products; and• pan-European personal pension products providers

1) Who and what?

Financial advisers (or “FAs”)

Banking and investment firms sector	<ul style="list-style-type: none">• credit institutions providing investment advice; and• investment firms providing investment advice
Investment funds sector	<ul style="list-style-type: none">• UCITS ManCos providing investment advice; and• AIFMs providing investment advice
Insurance and pension sector	<ul style="list-style-type: none">• insurance intermediaries providing insurance advice with regard to IBIPs; and• insurance undertakings providing insurance advice with regard to IBIPs

1) Who and what?

Financial products

- (i) portfolios of financial instruments managed in accordance with mandates given by clients on a discretionary client-by-client basis (e.g. shares, funds' units, derivatives, emission allowances units recognised for compliance with the requirements of EU ETS);
- (ii) undertakings for the collective investment in transferable securities (**UCITS**);
- (iii) alternative investment funds (**AIFs**);
- (iv) insurance-based investment products (**IBIPs**);
- (v) pension products;
- (vi) pension schemes; or
- (vii) pan-European personal pension products (**PEPPs**).

1) Who and what?

FMPs and FAs shall classify financial products in **three categories**:

- ✓ Article 9 SFDR / sustainable investment products (or “dark green products”);
- ✓ Article 8 SFDR / ESG-products (or “light green products”); and
- ✓ other non-ESG products

2) How to comply and when?

- **As from 10 March 2021:** website and pre-contractual disclosures
- **As from 1st of January 2022:** periodic reports (ESG/financial results monitoring) with first annual reports covering the calendar year 2021 / last quarter 2021 (as applicable)
- **Additional Taxonomy related pre-contractual disclosures:** (i) Art. 8(2a) SFDR (climate change mitigation or adaptation objectives) as from **1st of January 2022**, and (ii) Art. 9(4a) SFDR (sustainable use and protection of water and marine resources; transition to a circular economy; pollution prevention and control; or protection and restoration of biodiversity and ecosystems) as from **1st of January 2023**

SFDR requirements summary table

Levels	SFDR	Nature of the information	FMP	FA	Where?	RTS	Applicable Date
Entity level	Art. 3	Transparency of sustainability risk policies	✓	✓	Website	✗	10/03/2021
	Art. 4	<u>Comply or explain</u> : transparency of adverse sustainability impacts of investment decisions/advice on sustainability factors. Compulsory if more 500 employees (FMP+ only) from 30/06/2021	✓	✓	Website	✓	10/03/2021
	Art. 5	Transparency of remuneration policies in relation to the integration of sustainability risks	✓	✓	Website	✗	10/03/2021

Levels	SFDR	Nature of the information	FMP	FA	Where?	RTS	Applicable Date
All products	Art. 6	Transparency of the integration of sustainability risks into investment decisions/advice and assessment of the likely impacts of sustainability risks on the returns of the financial products. <u>FMPs and FAs may declare these risks irrelevant for the product in question</u>	✓	✓	Pre-contractual documentation	✗	10/03/2021
	Art. 7	<u>Comply or explain:</u> Transparency of adverse sustainability impacts at financial product level	✓	✗	Pre-contractual documentation	✗	Art. 7(1) 30/12/2022 Art. 7(2) 10/03/2021

Levels	SFDR	Nature of the information	FMP	FA	Where?	RTS	Applicable Date
Sustainable and ESG products	Art. 8 & Art. 9	Transparency of the promotion of ESG characteristics (Art. 8) and sustainable investment objectives (Art. 9) / consistency/alignment with reference benchmarks (where relevant) / specific disclosures for products with low carbon emission exposure objectives (Art. 9(3))	✓	✗	Pre-contractual documentation	✓	10/03/2021 but Art. 8(2a) and Art. 9(4a) from 1/01/2022 and 1/01/2023
	Art. 10	Description of objectives/characteristics / information on methodologies used / impact of the products and Art. 8, Art. 9 and Art. 11 information	✓	✗	Website	✓	10/03/2021
	Art. 11	Monitoring of objectives: description of the extent to which ESG characteristics are met (Art. 8) or sustainability impacts of the product (Art. 9) and comparison with the benchmark (where relevant)	✓	✗	Periodic reports	✓	1/01/2022 With first reports covering calendar year 2021 / last quarter 2021 (as applicable)

3) Current and future challenges

- Data gathering and technical know-how (in-house ESG experts or outsourcing)
- Level 1 Disclosures: *not to far, not to fast?*
- Regulatory watch: immediate requirements, future requirements



SFDR Guidelines for Luxembourg



Nicolas Pradel, Audrey Jarreton and Edouard d'Anterroches co-authored the SFDR Implementation Guide published on 9 March 2021 by the Association des Banques et Banquiers Luxembourg (ABBL), the Association of the Luxembourg Fund Industry (ALFI), and the Association des Companies d'Assurances et de Réassurances (ACA) for the use of their members.

A guide for Luxembourg banks, investment firms, funds managers, insurance and pension firms

Thank you for your attention!



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