

SFDR: Draft delegated act (RTS) amending the Delegated Regulation (EU) 2022/1288

ECON Scrutiny Session of 23 January 2024

This briefing has been prepared to support **ECON's work on scrutiny** of the draft Delegated Regulation amending the RTS laid down in Commission Delegated Regulation (EU) [2022/1288](#) as foreseen by Regulation (EU) No [2019/2088](#) on sustainability-related disclosures in the financial services sector (**SFDR**)¹.

IN BRIEF

Following the Commission's adoption of the Action plan on Sustainable Finance in 2018² with the aim to foster investment in sustainable projects and incorporate sustainability in financial advice, the SFDR was adopted by the European Parliament and the Council in November 2019. It aims to provide investors who seek to put their money into companies and projects focusing on sustainable development with the necessary information. Furthermore, the SFDR allows investors to assess the integration of sustainability risks into the business decision process.

In April 2022, the Commission adopted a delegated act under the SFDR³ and mandated the European Supervisory Authorities (ESAs: EBA, EIOPA and ESMA) to review certain aspects of the operation of the delegated act, focusing, amongst other topics, on the disclosures of principal adverse impacts (PAI) of investment decisions on sustainability factors and of financial products' decarbonisation targets. The ESAs asked to prolong the initial deadline of April 2023 by six months and published the final draft on RTS in December 2023⁴.

¹ [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.](#)

² [Communication from the Commission of 8 March 2018: "Action Plan: Financing Sustainable Growth".](#)

³ [Commission Delegated Regulation \(EU\) 2022/1288 of 6 April 2022 supplementing Regulation \(EU\) 2019/2088 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the content and presentation of the information in relation to the principle of 'do no significant harm', specifying the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports.](#)

⁴ [Final Report on draft Regulatory Technical Standards on the review of PAI and financial product disclosures in the SFDR Delegated Regulation, JC 2023 55, of 4 December 2023.](#)

The Commission now has three months to decide whether to endorse the draft RTS as proposed, or to adopt it with modifications. In November 2023, ECON coordinators decided to hold a scrutiny session on the matter, to allow the European Parliament to scrutinise the developments concerning the SFDR delegated act.

ITEM FOR DISCUSSION

- [Final Report on draft Regulatory Technical Standards on the review of PAI and financial product disclosures in the SFDR Delegated Regulation](#)

I. Background

A. The Sustainable Finance Disclosure Regulation

The Sustainable Finance Disclosure Regulation ([SFDR](#)) is part of the EU's sustainable finance framework, a set of policies aimed at promoting sustainable finance and investment in the EU. The SFDR aims to improve transparency in the market for sustainable investment products, prevent greenwashing, and increase transparency around sustainability claims made by financial market participants. The SFDR requires financial market participants to disclose sustainability information to investors, allowing them to make informed choices about companies and projects that support sustainability objectives. The regulation is designed to help investors assess how sustainability risks are integrated into the business decision process, thereby contributing to one of the EU's objectives of attracting private funding to boost the shift to a net-zero economy.

B. Delegated Acts

Delegated acts, as set out in Article 290 of the Treaty on the Functioning of the European Union, are non-legislative acts adopted by the Commission that serve to amend or supplement the non-essential elements of legislative acts. The power to adopt delegated acts is subject to conditions laid out in the basic act, defining objectives, content, scope and duration of the delegation of power. Furthermore, delegated acts cannot change the essential elements of the basic act and must be of general application. Before adopting a delegated act, the Commission usually consults experts from EU Member States. A delegated act adopted by the Commission can only enter into force if no objection is raised by the Parliament or the Council, within the deadline set in the basic act.

In the area of financial regulation, delegated acts are often drafted by the ESAs (EBA, EIOPA and ESMA) in view of their specific technical nature. Such delegated acts are referred to as regulatory technical standards (RTS). The ESAs draft RTS based on knowledge and data of certain areas of financial markets and usually following a public consultation. The Commission has three months to decide whether to endorse the draft on RTS as proposed, or adopt it with modifications, in accordance with Articles 10 to 14 of the ESAs Regulations ((EU) No [1093/2010](#), (EU) No [1094/2010](#) and (EU) No [1095/2010](#)).

C. RTS and ITS empowerments under the SFDR

The SFDR mandates the ESAs to develop draft RTS and ITS and the Commission to adopt the corresponding acts as listed in the table below.

Table 1: Overview of DAs/RTS under the SFDR

Legal basis in the SFDR	DA subject	Required adoption date	COM adoption/ OJ publication
Article 2a(3)	The relation to the principle of 'do no significant harm'	30.12.2020	06.4.2022/ 25.7.2022
Article 4(6), Article 4(7)	The sustainability indicators in relation to adverse impacts on the climate and other environment-related adverse impacts	30.12.2020 (for Art 4(6)) 30.12.2021 (for Art 4(7))	06.4.2022/ 25.7.2022
Article 8(3), Article 8(4)(a) and (b)	Financial products promoting, among other characteristics, environmental or social characteristics, or a combination of those characteristics.	30.12.2020 (for Art 8(3)) 1.6.2021 (for Art 8(4) third subparagraph point a)) 1.6.2022 (for Art 8(4) third subparagraph point b))	06.4.2022/ 25.7.2022 +Amended on 31.10.2022/17.2.2023
Article 9(5), Article 9(6)(a) and (b)	Disclosure of information in case when financial product has sustainable investment as its objective and an index has been designated as a reference benchmark	30.12.2020 (for Art 9(5)) 1.6.2021 (for Art 9(6) third subparagraph point a)) 1.6.2022 (for Art 9(6) third subparagraph point b))	06.4.2022/ 25.7.2022 +Amended on 31.10.2022/17.2.2023
Article 10(2)	Publishing and maintaining information for each financial product on websites	30.12.2020	06.4.2022/ 25.7.2022 +Amended on 31.10.2022/17.2.2023
Article 11(4), Article 11(5)(a) and (b)	Inclusion of description of the periodic reports referred to available financial products	30.12.2020 (for Art 11(4)) 1.6.2021 (for Art 11(5) third subparagraph point a)) 1.6.2022 (for Art 11(5) third subparagraph point b))	06.4.2022/ 25.7.2022 +Amended on 31.10.2022/17.2.2023
Article 13(2)	<u>Optional</u> ITS on standard presentation of information on the promotion of environmental or social characteristics and sustainable investments	NA	NA

After the adoption of the SFDR, the ESAs submitted a first batch of seven draft RTS in February 2021 and a second batch of six draft RTS in October 2021. The delay in the submission of the draft RTS by the ESAs was due to the Covid-19 pandemic. The Commission bundled all draft RTS into one Delegated Regulation (EU [2022/1288](#) adopted on 6 April 2022, which entered into application on 1 January 2023.

The ESAs submitted a amending draft RTS⁵ in September 2022 in line with the mandate from the Commission to modify the SFDR Delegated Regulation to ensure investors receive information reflecting the provisions set out in the Taxonomy Complementary Climate Delegated Act covering nuclear and fossil

⁵ [Final Report on draft Regulatory Technical Standards on information to be provided in pre-contractual documents, on websites, and in periodic reports about the exposure of financial products to investments in fossil gas and nuclear energy activities, JC 2022 42, of 30 September 2022.](#)

gas (Delegated Regulation (EU) [2022/1214](#)). The amending Delegated Regulation (EU) [2023/363](#) was adopted by the Commission one month later, in October 2022.

II. Content

The amending draft RTS that will be discussed at the ECON scrutiny session focuses, as per the Commission's request, on social principal adverse impacts (PAI) indicators and the disclosure of greenhouse gas (GHG) emission reduction targets. The ESAs have proposed the following changes:

- Extension of the list of universal social PAI indicators,
- Definition of the denominator for the purposes of PAI disclosure, and
- Disclosure of GHG emissions reduction targets, including consideration of whether the financial products making taxonomy-aligned investments sufficiently address the disclosure information on taxonomy-aligned economic activities.

The ESAs assessed the option of maintaining the status quo on the social PAI indicators previously developed under the ESAs' approval, or alternatively to develop new indicators based on existing corporate reporting, or go even further and develop a broader set of new indicators outside the scope of corporate reporting (European Sustainability Reporting Standards - ESRS). On the disclosure of GHG emissions reduction targets, the ESAs considered the options of maintaining the status quo, disclosure of PAI thresholds or criteria only if used, and lastly, mandatory use and disclosure of PAI thresholds for 'do not significantly harm' (DNSH).

Additional to the Commission's request and based on stakeholders' and National Competent Authorities' experience, the ESAs have proposed adjustments in the following areas:

- a technical revision to the PAI indicators,
- the DNSH disclosure design options,
- the simplification of the templates, and
- other minor technical changes, such as a revision of the provision for products with investment options, a harmonised calculation of sustainable investments and a requirement to produce the disclosures in machine-readable format.

A. Impact Assessment

The ESAs conducted an impact analysis (IA) assessing the cost and benefits of the ongoing RTS. The IA process consisted of outlining possible policy option scenarios for the cases of the extension of the list of new universal social PAI indicators, the definition of the denominator for the purposes of PAI, disclosure GHG emissions reduction targets disclosures, DNSH disclosure design options, as well as a number of other minor issues.

Between April and June 2023, the ESAs have conducted consumer testing exercises in four Member States⁶ and based on the results, are proposing some improvements and simplifications to the financial product templates, contained in Annexes II-V of the SFDR Delegated Regulation, including a new 'dashboard' with a simple summary of key information.

Following the IA, the ESAs agreed with the Commission that the current list of social indicators is insufficient and considered how to align the list of social indicators to those in the draft ESRS, as the ESAs' approach is

⁶ [Italy](#), [Poland](#), [France](#) and [the Netherlands](#).

to rely primarily on the Delegated Act on ESRS, with the intention to facilitate the reporting and ensuring consistency throughout existing sustainable finance legislative provisions. The ESAs regarded the definition of denominator as a highly difficult area to find a way forward given the split of stakeholders' opinions, suggesting a cautious approach would be to stick with the current approach while awaiting more consensus about better solutions, which might arise from the ongoing Level 1 review. The ESAs rejected a simple yes/no question on the GHG emissions reduction targets as it was considered not sufficiently transparent. The ESAs preferred the option of disclosure of the basic information about a potential GHG emissions reduction target in the financial product templates. Furthermore, the ESAs laid out the positions on DNSH design options, simplification of the current reporting templates, MOP provisions and harmonised sustainable investment calculation.

B. Consultation

Following the IA, the draft RTS was subject to [public consultation](#). The ESAs received 185 responses of market participants from various sectors. The majority of responders supported the efforts of simplification and streamlining of the SFDR framework as well as broadening the disclosure framework to improve the transparency and comparability of sustainable financial products. The respondents highlighted the challenging timeline and concerns on the anticipated review of SFDR text on Level 1. Industry respondents noted potential extra cost due to the social PAI indicators changes and challenges in data collection for non-EU jurisdictions as areas of concern. On the DNSH disclosure, some respondents suggested maintaining the status quo due to insufficient available data, additionally some respondents suggested that the DNSH long-term issue should be addressed in the Level 1 text. Finally, template implication and standardisation was welcomed by both industry and NGO respondents. The ESAs acknowledged the feedback, noting that the SFDR Level 1 review will not be concluded in the near future and hence the points requested by the Commission for revision should be addressed in the Level 2 text rather than not at all.

III. State of Play

In a letter of April 2022, the Commission mandated the ESAs to review several aspects of the operation of the SFDR delegated act with a deadline of one year, i.e. until 28 April 2023. In October 2022, the ESAs asked for a delay of six months to submit the final draft RTS, i.e. October 2023, and published a [consultation paper](#) on this review of the SFDR Delegated Regulation in April 2023. In November 2023, ECON coordinators decided to hold a scrutiny session on the topic in the ECON Committee meeting on 23 January 2024. Shortly after, the ESAs published the final draft on RTS and submitted it to the Commission on 4 December 2023. The Commission has three months following the delivery date to decide whether to endorse the draft on RTS as proposed, or to adopt it with modifications.

Procedure in the EP

Currently, the Parliament awaits the adoption and notification of the DA by the Commission. Under [Article 290 TFEU](#), the Parliament may object to the delegated act, but cannot amend it. The deadline for the European Parliament to object is **three months** from the date of notification of the adopted DA. The scrutiny period can be extended by another **three months** at the initiative of the European Parliament (or of the Council).

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