

ESAs Update Consolidated Q&A on SFDR (July 2024)

2 August 2024

The European Supervisory Authorities¹ (the “ESAs”) on 25 July 2024 published an update (the “Update”) to its [consolidated Q&As](#) on the Sustainable Finance Disclosure Regulation (the “SFDR”)² and its supplementing Delegated Act³ which, *inter alia*, contains the SFDR templates (the “SFDR Level II”).

The Update mainly addresses questions on the following topics:

- SFDR product-level and firm-level website disclosures;
- Sustainable investments under SFDR; and
- Calculation of specific principal adverse impact (“PAI”) indicators.

SFDR Product-Level and Firm-Level Website Disclosures. The Update clarifies the following points with regard to website disclosures on product-level and firm-level:

Registered alternative investment fund managers (“AIFMs”) which are also known as sub-threshold AIFMs managing funds with assets below certain prescribed thresholds, may not have a website and it has to date been unclear whether such managers would need to establish a website to post SFDR firm-level disclosures. The Update now confirms that the ESAs expect even these registered AIFMs to make the firm-level disclosure available on a website, and in case there is no website, to establish one for complying with the SFDR website disclosure obligations.

Furthermore, the ESAs confirmed in the Update that the SFDR product website disclosure does not have to contain the whole annual report or disclosure required under

¹ Comprising the European Securities and Markets Authority, the European Banking Authority and the European Insurance and Occupational Pensions Authority.

² Regulation (EU) 2019/2088.

³ Commission Delegated Regulation (EU) 2022/1288.

AIFMD⁴ but only the template-based disclosures under Articles 8 or 9 as well as their respective template-based periodic disclosures.

Sustainable Investments under SFDR. In contrast to sustainable investments aligned with the EU Taxonomy Regulation⁵ (the “Taxonomy”), the notion of sustainable investments under SFDR is not as clear as the ESAs and the European Commission are still in the process of interpreting the various elements forming part of the “sustainable investment” definition under SFDR.

So far, the ESAs clarified that the conditions for qualifying an investment as sustainable pursuant to SFDR can be determined either at the level of the investment as a whole or at the level of the individual economic activities pursued by the investee company. The Update contains a helpful table that demonstrates how to exercise calculations of sustainable investment on the basis of separate economic activities for several investments side-by-side.

Where funds invest in other financial products (in particular fund-of-funds investing in target funds), the Update emphasizes at various points that the sustainable investment test under SFDR has to be made at the level of the underlying assets on a look-through basis. This means that a fund-of-funds may not look at the features and qualities of their target funds but have to look-through to the target funds’ underlying assets. In other words, when applying the sustainable investment test, the fund-of-funds manager will have to consider data from target fund’s investee companies, rather than assessing the target fund as a whole. Given that most fund-of-funds practically have no or very limited influence on and access to the target funds’ assets and, in a private fund context, have less flexibility to quickly shift their target fund-portfolio, this makes sustainable investment disclosures under Article 9 or Article 8 “dark” even more challenging for fund-of-fund-strategies.

Furthermore, the ESAs clarified that in case of delegation of portfolio management, the delegating fund manager remains responsible for determining what a sustainable investment shall be in the respective fund. The Update implicitly also is clear in the fact that fund managers may adopt concepts of sustainable investments (e.g., developed by an index provider or another third party) for their funds – they however remain responsible for the adherence to that concept in the fund’s portfolio management. In practice, managers of fund-of-funds will thus be required to apply the same criteria across all their target funds with respect to the sustainable investment assessment, which could result in complexities as such target funds can be expected to apply

⁴ Directive 2011/61/EU.

⁵ Regulation (EU) 2020/852.

different methodologies when determining the sustainability of their own underlying investments.

Calculation of Specific PAI Indicators. The PAI indicators have given rise to many questions in practice. The Update adds a few responses to the already large number of Q&As on this topic, including the following clarifications:

It is clear now that the PAI indicator on “Exposure to companies active in the fossil fuel sector” (PAI indicator 4 of table 1 in Annex I of SFDR Level II) works on a pass/fail-basis — i.e., “a company is considered to be active in the fossil fuel sector as soon as it derives any revenues from any of the activities mentioned in the definition”. Accordingly, the aggregate amount of the investments which fulfil such requirements pursuant to that analysis has to be disclosed under this PAI indicator as “failing” investments.

In case currencies need to be converted to EUR, the Update clarifies that all reference points have to use the exchange rate at the end of the fiscal year of the firm or product.

For calculating GHG emissions by underlying financial products, fund managers and other financial market participants, according to the Update, must look-through to the investee company causing the GHG emissions.

Miscellaneous. Besides the topics covered above, the Update contains two additional interesting responses on the good governance standard at the level of special purpose vehicles (“SPVs”) and the calculation of alignment with the Taxonomy.

The ESAs explicitly acknowledge that SPVs holding real estate or other real assets as well as other SPVs through which the fund is holding its assets do not have to be taken into account as investee companies that need to have a certain good governance standard under Article 8 or 9.

On the Taxonomy, the Update holds a helpful calculation example to determine the alignment with the Taxonomy and how to display such alignment in the SFDR periodic report as well as a prediction in the SFDR pre-contractual disclosure. While the example does not contain surprises as it aligns with previous guidance provided by the ESAs, it is a helpful refresher as it can be expected that calculation of Taxonomy-alignment will be more important in the future with more and more eligible data becoming available.

Conclusion. As described, the SFDR still is tied to a lot of uncertainty which causes fund managers and other financial market participants to refrain from PAI consideration at both firm- and product-level as well as from committing to make sustainable investments disclosing under Article 8 “dark” or Article 9. Although the

clarifications under the Update seem burdensome in some cases (especially the look-through approach for sustainable investments), we expect the market to welcome the additional clarifications on the calculation of PAIs and the term of sustainable investment under SFDR due to providing more legal clarity. Looking at a new version of SFDR possibly becoming applicable within this decade still, the ESAs can however only make temporary fixes right now — it is on the European legislator to prevent from the need of a now 75 pages long consolidated SFDR Q&A for SFDR's future iteration.

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Please do not hesitate to contact us with any questions.



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