

Additional clarification on the application of SFDR and Article 8 of the Taxonomy Regulation

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Publication of a joint statement of the European Supervisory Authorities with respect to the application of SFDR

In order to mitigate the risk of divergent application of Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (the **SFDR**) within the interim period from 10 March 2021, until the application date of the Regulatory Technical Standards (**RTS**), the three European Supervisory Authorities (the **ESAs**) have published on 25 February 2021 a joint supervisory statement (the **Supervisory Statement**).

The key objective of the Supervisory Statement is to "*achieve an effective and consistent application and national supervision of the SFDR*" and to promote a fair situation for all financial market participants and financial advisers for the sake of investors' protection.

The ESAs encourage using the draft RTS released in the ESAs Joint Committee final report on 4 February 2021 (the **Draft RTS**) as a reference as from 10 March 2021 until the application of the final RTS at a later date.

The Supervisory Statement includes a very informative annex (the **Annex**) pursuant to which the ESAs bring some guidance on the timeline for application of some provisions of the SFDR, and specifically on the timeline for entity-level principal adverse impact disclosures and for financial products' periodic reporting. The Annex also provides a summary table of the application dates of the SFDR, as well as the Taxonomy Regulation^[1] and its related RTS.

It should be noted that the Draft RTS are still to be endorsed by the European Commission and are subject to the non-objection from the European Parliament and/or the Council of the European Union within a period of three (3) months following the date of notification of the RTS adopted by the European Commission.

It is also stated that the publication of a consultation paper from the ESAs on taxonomy-related

product disclosures under the Taxonomy Regulation "*which amends the empowerments in articles 8(4), 9(6) and 11(5) of the SFDR*" is to be expected in March 2021.

Advice under article 8 of the Taxonomy Regulation by the ESAs to the European Commission

Following the call for advice from the European Commission in September 2020, on 1 March 2021, the ESAs have submitted their advice under article 8 of the Taxonomy Regulation to the European Commission, comprising the information to be provided by non-financial undertakings and asset managers to comply with their disclosure obligations under the NFRD[2].

The final report of the European Securities and Markets Authority (the **ESMA**) includes recommendations which define the key performance indicators (the **KPIs**) disclosures to ascertain which businesses under the scope of the NFRD qualify as environmentally sustainable under the Taxonomy Regulation and information to be disclosed by the relevant asset managers.

The ESMA also suggests that non-financial undertakings and asset managers use standardised templates for their reporting under Article 8 of the Taxonomy Regulation "*in order to facilitate comparability of these disclosures and enhance their accessibility to investors that will reuse this information*".

The European Banking Authority and the European Insurance and Occupational Pensions Authority have also elaborated their advice in the KPIs specific to the institutions and firms they supervise (ie. credit institutions, investment firms, insurers and reinsurers) and have suggested how such KPIs should be disclosed on the scope and methodology for their calculation.

Should you require more information on the Supervisory Statement and the advice from the ESAs with respect of article 8 of the Taxonomy Regulation, please contact our Luxembourg investment funds team.

[1] the Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment

[2] Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (Non-Financial Reporting Directive)

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