

ESAs propose new disclosures for aspects of SFDR

The three European Supervisory Authorities (EBA, EIOPA and ESMA – ESAs) have delivered to the European Commission (EC) their Final Report with draft Regulatory Technical Standards (RTS) regarding the content and presentation of 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 under the Sustainable Finance Disclosure Regulation (SFDR).

Background

On 8 April 2022 the ESAs received a mandate from the EC to make amendments to the SFDR Delegated Regulation to ensure investors receive information reflecting the provisions set out in Commission Delegated Regulation (EU) 2022/1214 (Complementary Climate Act (CDA)) covering nuclear and fossil gas, which was formally adopted by the EC on 9 March 2022. The EC mandate to the ESAs requested the delivery of the amending draft RTS in exceptionally urgent circumstances by 30 September.

Due to the urgency of the matter, the ESAs could not conduct a public consultation on the proposals or analyse the potential related costs and benefits. Nevertheless, the ESAs' stakeholder groups were asked for feedback and a workshop was held with consumer representative associations.

Summary of Changes Made

The draft changes focus on the disclosure of specific investments in fossil gas and nuclear energy related environmentally sustainable economic activities (taxonomy-aligned investments) as part of the disclosures of the taxonomy-aligned investments of the financial product.

The amended final draft RTS aims to strengthen protection for end-investors and improve the disclosures that they receive from a broad range of financial market participants and financial advisors, as well as regarding financial products.

Specific New Disclosures:

- add a yes/no question in the financial product templates of the SFDR Delegated Regulation to identify whether the financial product intends to invest in such activities; if the answer was yes, a graphical representation of the proportion of investments in such activities would be required; and
- implement minor technical revisions to the Delegated Regulation to correct inconsistencies observed after its publication.

The ESAs consider the existing disclosures in the SFDR Delegated Regulation sufficient for fossil gas or nuclear energy investments by financial products that are not covered by the EU Taxonomy.

Entry Into Force

The EC's CDA is set to apply from 1 January 2023. Considering the regulatory deadlines for the adoption by the EC and the scrutiny period by the European Parliament and Council, the issue of whether the SFDR Delegated Regulation containing the amendments would be applicable from 1 January 2023 is beyond the ESAs' control.

Due to the urgency of the matter and the challenging application timeline of the CDA, the ESAs have left it to the EC to include an expected application date when they endorse the draft RTS. In addition, the ESAs have proposed that the entry into force should take place the day after the publication of the delegated act in the Official Journal, rather than the standard 20 days.



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