



Brussels, 31.10.2022
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COMMISSION DELEGATED REGULATION (EU) .../...

of 31.10.2022

amending and correcting the regulatory technical standards laid down in Delegated Regulation (EU) 2022/1288 as regards the content and presentation of information in relation to disclosures in pre-contractual documents and periodic reports for financial products investing in environmentally sustainable economic activities

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The Sustainable Finance Disclosures Regulation (EU) 2019/2088 (SFDR) sets out sustainability-related disclosure requirements for financial market participants, financial advisers and financial products. Its aim is to improve sustainability-related disclosures and comparability of the disclosures for end-investors, and to reduce the occurrence of greenwashing.

At the same time, Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment establishes the framework for the creation of the EU taxonomy of environmentally sustainable economic activities.

Commission Delegated Regulation (EU) 2022/1214 (the ‘Complementary Delegated Act’) sets out the technical screening criteria for climate change mitigation and climate change adaptation for additional economic activities in the energy sectors that were not included in Commission Delegated Regulation (EU) 2021/2139 (the ‘Climate Delegated Act’), in particular in the natural gas and nuclear energy sectors.

In this context, this Delegated Regulation amending and correcting Commission Delegated Regulation (EU) 2022/1288 (the ‘SFDR Delegated Regulation’) will ensure that investors receive information reflecting the provisions set out in the Complementary Delegated Act. This relates to information that should 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.

The amendments will ensure that disclosures about the degree to which investments are in environmentally sustainable economic activities, i.e. taxonomy-aligned activities, provide full transparency about investments in sectors and sub-sectors of the economy covered by and compliant with the Complementary Delegated Act. In particular, this will cover the proportion such investments represent within all investments and in environmentally sustainable economic activities. These amendments will ensure full transparency on the proportion of investments in sectors and sub-sectors of the economy that derive revenues from activities listed in Template 1 of Annex III to the Complementary Delegated Act constituting a new Annex XII of the Commission Delegated Regulation (EU) 2021/2178 (the ‘Article 8 Disclosures Delegated Act’).

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Given the urgency, limited adjustments of the existing regulatory framework and the need to ensure legal coherence between the date of application of Delegated Regulation (EU) 2022/1214 and Delegated Regulation (EU) 2022/1218 that will apply as of 1 January 2023, the European Supervisory Authorities (ESAs¹) relied on the procedure under Article 10 of each of the respective ESA Regulations, which allows the ESAs not to conduct open public consultations ‘in relation to the particular urgency of the matter’.

However, in their efforts to allow stakeholder feedback, the ESAs organised, on Monday 27 June 2022, a consumer association workshop on the main elements of the nuclear and gas disclosures. In addition, the ESAs invited feedback from their stakeholder groups from 23 June until 12 July 2022.

¹ ESMA, EBA, EIOPA.

Based on the feedback from consumer associations and ESA stakeholder groups, the ESAs decided to propose amendments to the SFDR Delegated Regulation.

This Delegated Act amends the SFDR Delegated Regulation, which was already published and for which the scrutiny periods already expired without objections from the Parliament and the Council. The adoption of the SFDR Regulation was subject to impact assessments² and an open public consultation³. Moreover, the amendments proposed in this Delegated Regulation are very limited and do not constitute real policy options, as they update the SFDR Regulation in light of the Complementary Delegated Act mainly by including references to natural gas and nuclear energy sectors. No further impact assessment, or stakeholder consultation – in addition to the one carried out by the ESAs – was therefore necessary to prepare this Delegated Regulation.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

This Delegated Regulation is based on the empowerments set out in the following articles of the Sustainable Finance Disclosures Regulation:

- Article 8(3), fourth subparagraph;
- Article 8(4), fourth subparagraph;
- Article 9(5), fourth subparagraph;
- Article 9(6), fourth subparagraph;
- Article 10(2), fourth subparagraph;
- Article 11(4), fourth subparagraph; and
- Article 11(5), fourth subparagraph.

These amendments should cover in particular the following provisions of the Sustainable Finance Disclosures Regulation:

- pre-contractual and periodic documents or information referred to in Article 6(3) and Article 11(2); and
- product disclosures to be made on websites referred to in Article 10(1) for financial products referred to in Article 8(1) to (2a) and in Article 9(1) to (4a).

² Relevant sustainable finance impact assessment available here: https://finance.ec.europa.eu/publications/commission-legislative-proposals-sustainable-finance_en

³ Feedback from the public consultation available here: https://finance.ec.europa.eu/system/files/2018-05/2017-investors-duties-sustainability-feedback-statement_en.pdf

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector⁴, and in particular Article 8(3), fourth subparagraph, Article 8(4), fourth subparagraph, Article 9(5), fourth subparagraph, Article 9(6), fourth subparagraph, Article 10(2), fourth subparagraph, Article 11(4), fourth subparagraph and Article 11(5), fourth subparagraph thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2022/1288⁵ lays down the details of the content and presentation of the information in relation to the principle of ‘do no significant harm’. It also specifies the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts and the content and presentation of the information to be provided in pre-contractual documents, on website and in periodic reports, in relation to the promotion of environmental or social characteristics and sustainable investment objectives of financial products. Moreover, with regard to the financial products investing in an economic activity that contributes to an environmental objective within the meaning of Article 2, point (17), of Regulation (EU) 2019/2088, Delegated Regulation (EU) 2022/1288 also specifies the information on the degree of taxonomy-alignment to be disclosed within pre-contractual documents and periodic reports.
- (2) Commission Delegated Regulation (EU) 2022/1214⁶, with particular reference to fossil gas and nuclear energy sectors was adopted on 9 March 2022.

⁴ OJ L 317, 9.12.2019, p. 1.

⁵ 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 (OJ L 196, 25.7.2022, p.1).

⁶ Commission Delegated Regulation (EU) 2022/1214 of 9 March 2022 amending Delegated Regulation (EU) 2021/2139 as regards economic activities in certain energy sectors and Delegated Regulation (EU)

- (3) The Commission invited the European Supervisory Authorities to jointly propose amendments to Delegated Regulation (EU) 2022/1288 in relation to the 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.
- (4) Those amendments are necessary to increase transparency and thereby to help financial markets participants and investors to identify environmentally sustainable fossil gas and nuclear related activities invested in by financial products. The provision of the more detailed information on investments in those activities should also foster comparability of the information disclosed to investors. Therefore, it is appropriate to provide transparency on investments in environmentally sustainable fossil gas and nuclear energy activities over the whole life of the relevant financial products, in pre-contractual documents and in periodic reports. Such information should also be included in the website disclosures. The European Supervisory Authorities noted that transparency about investments in sectors and sub-sectors related to fossil gas and nuclear energy activities is already required as part of the provisions for periodic reports under Delegated Regulation (EU) 2022/1288.
- (5) It is necessary to clarify that to trigger the application of Article 6 of Regulation (EU) 2020/852⁷, it is irrelevant if a financial product commits to invest in economic activities that contribute to an environmental objective within the meaning of Article 2, point (17), of Regulation (EU) 2019/2088.
- (6) In addition, European Supervisory Authorities noted that two changes were required to the cross-references in the periodic disclosures given that these were erroneous.
- (7) Delegated Regulation (EU) 2022/1288 should therefore be amended and corrected accordingly.
- (8) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority (European Supervisory Authorities).
- (9) The Joint Committee of the European Supervisory Authorities referred to in Article 54 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council⁸, in Article 54 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council⁹ and in Article 54 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council¹⁰ has requested the advice of the Banking Stakeholder

2021/2178 as regards specific public disclosures for those economic activities (OJ L 188, 15.7.2022, p. 1).

⁷ 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, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

⁸ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

⁹ Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

¹⁰ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

Group established in accordance with Article 37 of Regulation (EU) No 1093, the Insurance and Reinsurance Stakeholder Group and the Occupational Pensions Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1094/2010, and the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010.

- (10) The amendments to Delegated Regulation (EU) 2022/1288 are limited adjustments of the existing regulatory framework and are necessary to align the disclosure framework to Delegated Regulation (EU) 2022/1214, which is to apply from 1 January 2023. Given the limited scope of the amendments and the need to ensure legal certainty and coherence with the application of Delegated Regulations (EU) 2022/1214 and 2022/1288, it would have been disproportionate for the European Supervisory Authorities to conduct open public consultations or analyses of the potential related costs and benefits,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2022/1288

Delegated Regulation (EU) 2022/1288 is amended as follows:

- (1) in Article 15, paragraph 2 is replaced by the following:
- ‘2. For the purposes of paragraph 1, point (a), all of the following shall apply:
- (a) financial market participants shall use:
 - (i) the same key performance indicator for the aggregated investments in non-financial undertakings;
 - (ii) the same key performance indicator for the aggregated investments in the same type of financial undertakings;
 - (b) for insurance and reinsurance undertakings that carry out non-life underwriting activities, the key performance indicator may combine the investment and the underwriting key performance indicators in accordance with Article 6 of Delegated Regulation (EU) 2021/2178;
 - (c) where the financial products invest in environmentally sustainable economic activities referred to in Sections 4.26, 4.27 and 4.28 of Annexes I and II to Delegated Regulation (EU) 2021/2139, or in environmentally sustainable economic activities referred to in Sections 4.29, 4.30 and 4.31 of those Annexes, the graphical representations shall illustrate separately the proportion of the aggregated investments in:
 - (i) environmentally sustainable economic activities referred to in Sections 4.26, 4.27 and 4.28 of those Annexes;
 - (ii) environmentally sustainable economic activities referred to in Sections 4.29, 4.30 and 4.31 of those Annexes.’;
- (2) Article 55 is amended as follows:
- (a) in paragraph 1, the introductory sentence is replaced by the following:

‘For financial products referred to in Article 6, first paragraph, of Regulation (EU) 2020/852, financial market participants shall include in the section ‘What was the proportion of sustainability-related investments?’ in the template set out in Annex IV all of the following information:’;

(b) (b) in paragraph 2, the following point (d) is added:

‘(d) where the financial products made investments during the period covered by the periodic report in environmentally sustainable economic activities referred to in Sections 4.26, 4.27 and 4.28 of Annexes I and II to Delegated Regulation (EU) 2021/2139 or in environmentally sustainable economic activities referred to in Sections 4.29, 4.30 and 4.31 of those Annexes, a graphical representation shall illustrate separately:

(i) the aggregate of the environmentally sustainable economic activities referred to in Sections 4.26, 4.27 and 4.28 of those Annexes;

(ii) the aggregate of the environmentally sustainable economic activities referred to in Sections 4.29, 4.30 and 4.31 of those Annexes.’;

(3) Annexes II to V are replaced by Annexes I to IV to this Regulation.

Article 2

Corrections to Delegated Regulation (EU) 2022/1288

Delegated Regulation (EU) 2022/1288 is corrected as follows:

(1) in Article 55(1), in point (b), point (iv) is replaced by the following:

‘(iv) the information referred to in Article 15(3), point (b);’;

(2) in Article 62(1), in point (b), point (iv) is replaced by the following:

‘(iv) the information referred to in Article 15(3), point (b);’.

Article 3

Entry into force

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 31.10.2022

For the Commission
The President
Ursula VON DER LEYEN