Final Report on draft Regulatory Technical Standards (RTS) developing Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector. International Bulletin, March 2021.

On 2 February 2021 the European Supervisory Authorities (ESAs), through their Joint Committee, published a final report containing the draft regulatory technical standards (RTS) that develop the content, methodologies and presentation of the disclosures to be provided in accordance with the provisions of Articles 2a, 4(6) and 4(7), 8(3), 9(5), 10(2) and 11(4) of Regulation (EU) 2019/2088 (the Disclosure Regulation or the Regulation). Specifically, they develop:

1) The details of the content, methodology and presentation of the statement that **entities** must provide on their websites about the **principal adverse impacts of their investment decisions on sustainability factors**. Financial market participants (which for the purposes of securities markets are fund managers and entities providing the service of portfolio management) will have to report on the principal adverse impacts of all their investment decisions on sustainability factors, if they are considered. Likewise, financial advisers receive information on the principal adverse impacts of the investment decisions from financial market participants, so they must indicate whether and, if so, how they take it into account when including financial products in their advice.

2) The details of the presentation and content of the **pre-contractual** information to be provided on financial products that promote, among other characteristics, environmental or social characteristics, or a combination of those (**Article 8 of the Regulation**) and on financial products that have sustainable investments as their objective (**Article 9 of the Regulation**).

3) The details of the content of the **information** that entities must provide on their **websites** about the **financial products referred to in Articles 8 and 9** that they manage.

4) The details of the presentation and content of the **periodic information** to be provided on financial products referred to in **Articles 8** and **9**.

5) The details of the presentation and content of the information regarding the **principle of "do no significant harm"** established in Article 2(17) of the Regulation.

The final draft RTS take into account the responses received to the Public Consultation launched on 23 April 2020, which has led to some changes in respect of the initial proposal. The summary of the responses to the Consultation together with the reaction of the ESAs can be found as an annex to the final report. Additionally, the proposed rules contain standardised templates for pre-contractual and periodic information that were tested with consumers in the Netherlands and Poland, as well as in a public survey carried out by the ESAs. Input was also received from the European Environment Agency and the Joint Research Centre of the European Commission, as established in the Disclosure Regulation. The annexes to the final report also include the responses to the Public Consultation submitted by ESMA's Securities and Markets Stakeholder Group and EIOPA's Insurance and Reinsurance Stakeholder Group and Occupational Pensions Stakeholder Group.

The European Commission is expected to implement the RTS in the coming months as the ESAs consider they should apply from 1 January 2022. Since the Disclosure Regulation applies from 10 March 2021, the ESAs have published a supervisory statement in order to achieve consistent application and supervision of the Regulation's requirements until the implementing rules are applicable.

General principles on the presentation of information

The draft RTS include a series of standardised templates for mandatory use by financial market participants, specifically five: 1) a template for the statement on the principal adverse impacts at entity level, 2) a template for pre-contractual information on Article 8 products, 3) a template for pre-contractual information on Article 9 products, 4) a template for periodic information on Article 8 products and 5) a template for periodic information on Article 9 products. Notwithstanding their mandatory nature, entities may adapt the fonts, type and size as well as the colours used.

The RTS requires the preparation of two two-page summaries, one on the information contained in the statement on the principal adverse impacts at entity level and another on the information related to a product available on the entity's website. In addition to the home language, both summaries must be provided in English (in the case of the summary of product information, if it is marketed in more than one Member State) and in an official language of the Member States in which the products are marketed.

Statement on the principal adverse impacts at entity level

The template for this statement, which entities must publish in a specific area of their web page, is included as annex I to the proposed RTS.

First, a summary of the information contained in the statement must be included. Next, the template specifies a series of indicators related to 1) adverse impacts on the climate and other environment-related adverse impacts, and 2) adverse impacts in the field of social and employee matters, respect for human rights, anti-corruption and anti-bribery matters. These indicators are divided into a set of indicators that must be reported on, regardless of the result of the analysis carried out by the financial market participant, indicating their impact on sustainability factors, and a set of optional indicators to be used to identify, assess and prioritise additional principal adverse impacts. Although most of the indicators refer to investments in investee companies, indicators are also provided to measure the impact of investments in sovereign (and supranational) bonds and real estate assets. In total, there are 18 mandatory indicators (9 environmental and 5 social indicators for equity and corporate bonds, 1 environmental and 1 social indicator for sovereign bonds and 2 environmental indicators for real estate assets). The optional indicators include 22 environmental and 24 social indicators, mostly referring to equity and corporate bonds (16 environmental and 17 social). However, financial market participants must include information related to other indicators that they use to identify and assess the principal adverse impacts.

When a description of the principal adverse impacts for a previous reference period is provided, the statement must contain a historical comparison that covers at least the five reference periods prior to the current period.

In addition to the information on indicators, the standard template includes other fields of narrative information, specifically, the statement must contain details on the policies for identifying the principal adverse impacts (date of approval, body responsible, methodology, sources of data used, etc.), the actions taken and planned to mitigate these impacts both in the current year and the next, the engagement policies (a brief summary that should also indicate how they evolve in the event that the adverse impacts are not reduced over more than one reference period) and adherence to international standards (for example, responsible business conduct codes, internationally recognised standards for due diligence and reporting and, where relevant, alignment with the objectives of the Paris Agreement, indicating the indicators of adverse impacts, methodology and data used to measure adherence or alignment as well as explanations regarding whether prospective climate scenarios are used or not).

While the requirements of the Regulation are applicable from 10 March 2021, the specific details of the statement contained in the implementing rules would be applied progressively. For this reason, although the template would start to be used from 1 January 2022, the information relating to a reference period would not be included, so that the first information relating to a reference period published in accordance with the template would be produced in 2023 with respect to the 2022 reference period. The statement must be published each year before 30 June.

Financial advisers must also report on how they use the information published by financial market participants, whether they rank and select financial products taking into account the indicators of principal adverse impacts declared by financial market participants, in which case they must indicate the methodology used and any criteria or thresholds applied to select financial products based on those impacts.

When financial market participants or financial advisers do not consider the principal adverse impacts of their investments on sustainability factors, they must clearly indicate this in a specific section that also includes an explanation of the reasons why they are not considered and, if they plan to consider them in the future, an indication as to when.

Pre-contractual information on environmental or social characteristics and sustainable investment

objectives of financial products

In relation to pre-contractual information, the templates are conceived as annexes to the main pre-contractual document indicated in Article 6.3 of the Regulation, which, in turn, must include a reference to the annex. This has been considered the best way to integrate a template in documents that are diverse in nature and scope (related to investment funds, pension plans and products or investment portfolios). This is because the disclosures required under the Regulation are the same for all, with no distinction according to the type of product. Nor are they differentiated by the type of investor, retail or institutional. The templates therefore seek to offer a balance between easy understanding and completeness. In terms of understanding, the templates are designed to contain concise information and refer to the data available on the entity's website for more details regarding the methodology or source, among others. The templates also allow the approach to be adapted to the specific features of the products. However, in terms of completeness, the need to provide investors with the necessary details to make well-informed decisions is recognised and a document is considered more appropriate than the information on websites, both for attracting investors' attention and, given its legal nature, for clarifying the responsibility of the product manufacturer towards the end-investor. More granular pre-contractual disclosures could better suit the objective of combating greenwashing.

The information that must be provided in the templates includes a clear identification of the type of product in question (Article 8 or 9) and, consequently, a description of the environmental or social characteristics, or the combination of both, that it promotes or its sustainable investment objective, as well as the sustainability indicators that will be used to measure its achievement.

The investment strategy must also be described and, briefly, the policy used to assess the good governance practices of the investee companies (referring to the entity's website for more information).

Regarding the product investments, an indication must be given: 1) for Article 9 products, of the minimum proportion of sustainable investments and 2) for Article 8 products, of the minimum proportion of investments used to attain the characteristics promoted, which in turn may partially include sustainable investments. In addition, for both types of products, the use of derivatives to achieve sustainable characteristics or objectives must be explained, in addition to the purpose of the remaining proportion of investments (those that are not sustainable and do not promote sustainable characteristics) and whether they comply with some type of environmental or social safeguards. For Article 9 products, an indication must also be given as to how this remaining proportion does not affect the delivery of the sustainable investment objective on a continuous basis and whether it is used for hedging, relates to cash held as ancillary liquidity or are investments for which there is insufficient data.

Regarding sustainable investments, the template must disclose how they contribute to a sustainable investment objective and how they do not significantly harm any sustainable objective. The RTS detail the disclosure requirements on whether the "do no significant harm" principle set forth in Article 2(17) of the Disclosure Regulation is complied with. Firstly, entities must indicate how the indicators of principal adverse impacts included in Annex I and referred to in the foregoing section are taken into account. An additional requirement has also been introduced requiring entities to state how their sustainable investments are aligned with the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights, including the principles and rights set out in the eight fundamental conventions identified in the Declaration of the International Labour Organisation on Fundamental Principles and Rights at Work and the International Bill of Human Rights. This ensures alignment with the minimum safeguards established in Article 18 of Regulation (EU) 2020/852 (the Taxonomy Regulation).

The pre-contractual information must also contain an indication as to whether the product takes into account the principal adverse impacts of its investments, without prejudice to the disclosure obligations contained in Article 7 of the Regulation, which the RTS do not develop since it is not within their mandate to do so.

Entities musts also state whether a reference benchmark has been designated for the product. In this regard, for Article 9 products, the draft RTS aim to make the disclosure requirements for products with passive strategies that rely on an index and those with active strategies as uniform as possible, so that the former must disclose index-level information.

Product-level website disclosures

The draft RTS also detail the content and presentation of the information that entities must publish on their websites about the Article 8 and 9 products that they manage. They indicate where and how this information must be published, and that a two-page summary must also be made available on the websites. The RTS also include a

list of items to be included in the disclosure, focusing on the methodology used to measure the achievement of the sustainable characteristics or objective, the data sources used and how they are processed, the limitations of the methodologies used and how they are addressed, information on due diligence and controls, as well as the engagement policies.

In addition, the information on the website must contain pre-contractual and periodic information, that is, information on the sustainable characteristics or objectives of the product, the investment strategy (detailing the policy for assessing the good governance practices of investee companies), the proportion of investments and a description of how the sustainable characteristics or objectives and their sustainability indicators are monitored throughout the life of the product, as well as the control mechanisms. Additionally, the information on the website must include details of direct and indirect investments, details that are not offered in the pre-contractual and periodic information.

Likewise, the website must contain information on the designated benchmark and a hyperlink to the website of the benchmark administrator, where information can be consulted in greater detail.

In the same way, products that make sustainable investments must report on how the "do no significant harm" principle is complied with, as described in the previous section.

Product-level periodic disclosures

Lastly, the draft regulations detail the content and the presentation of the periodic information that must be disclosed on Article 8 and 9 products. As for pre-contractual information, the template is conceived as an annex to the main document indicated in Article 11(2) of the Regulation.

The list of items to be included in this template focuses on information about the success of the product in attaining the promotion of environmental or social characteristics or the sustainable investment objective, as well as the actions that have been taken during the reporting period to achieve the sustainable characteristics or objective. In addition, it will include a historical comparison that covers at least the five previous reference periods and information on the top 15 investments made during the reference period.

In the same way, products that make sustainable investments must report how the "do no significant harm" principle has been successfully complied with, in line with the pre-contractual information and the disclosures on the website.

Lastly, information must be provided on the designated benchmark, specifically on how it differs from a relevant broad market index and on how the product has performed during the reference period compared with the benchmark and the relevant broad market index.

Useful links:

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

Final Report on draft Regulatory Technical Standards with regard to Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector

Joint ESA Supervisory Statement on the application of the Sustainable Finance Disclosure Regulation. 25 January 2021

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

Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector. International Bulletin of February 2020.