

6th October 2022

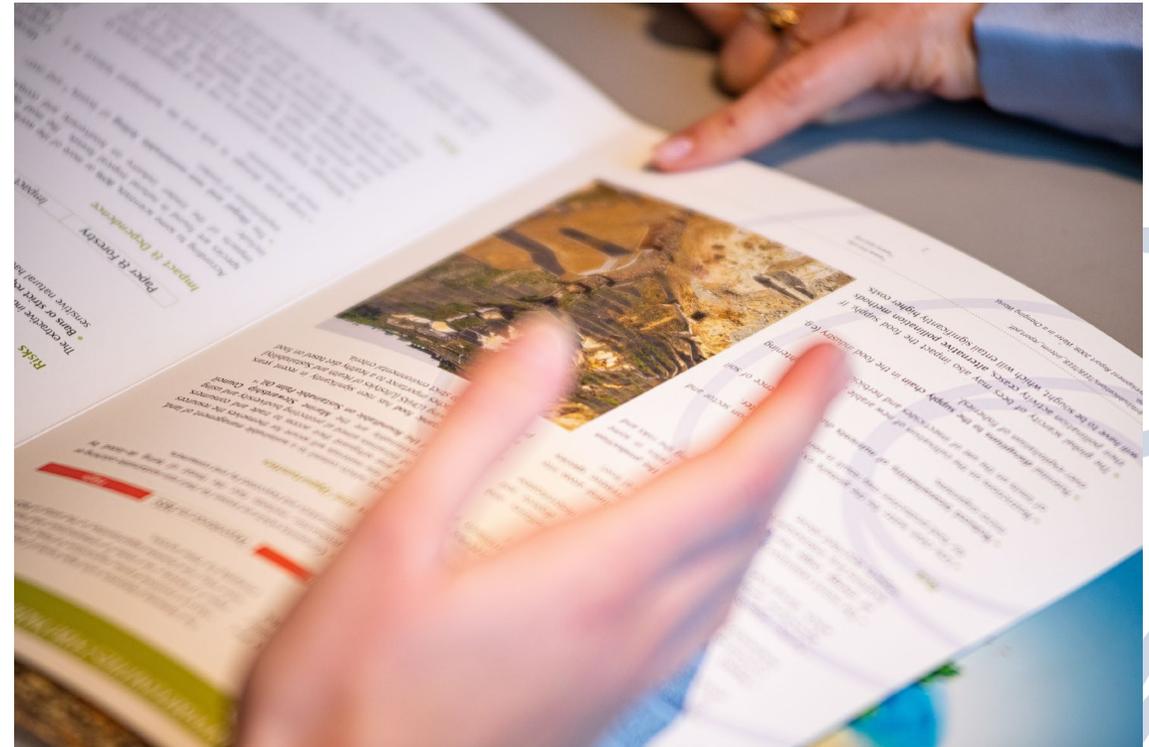
EU SUSTAINABLE FINANCE UPDATES

Eurosif
The European Sustainable Investment Forum

Agenda of this edition

Thursday 6 October 2022

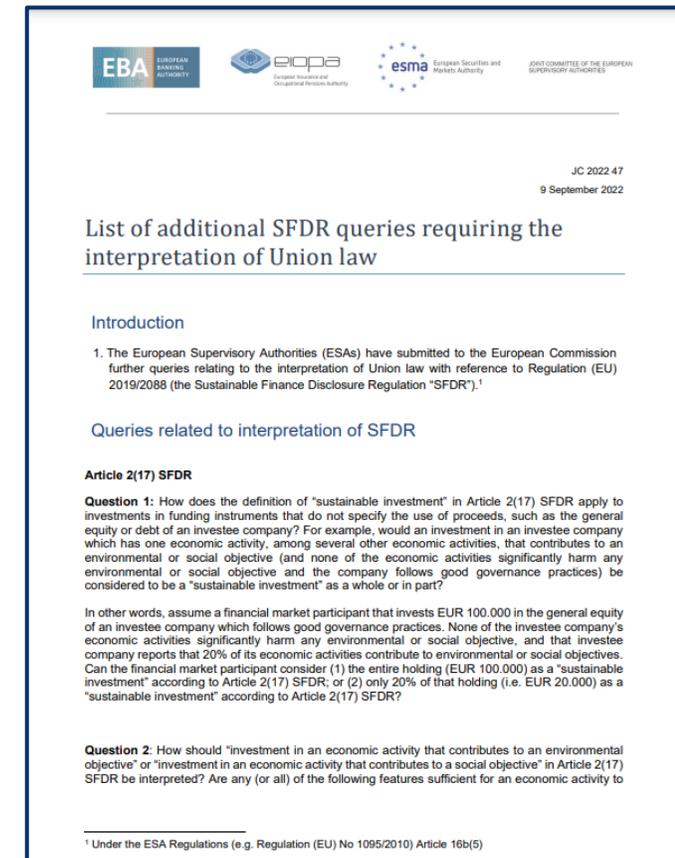
- **SFDR** – ESAs queries to the EU Commission
- **SFDR** – ESAs’ draft Regulatory Technical Standards on the exposure of financial products to natural gas & nuclear energy activities
- **MiFID II** – ESMA’s guidelines on sustainability-related aspects of the suitability assessment
- **EU Green Bond Standard** – State of play



SFDR - ESAs queries to the EU Commission



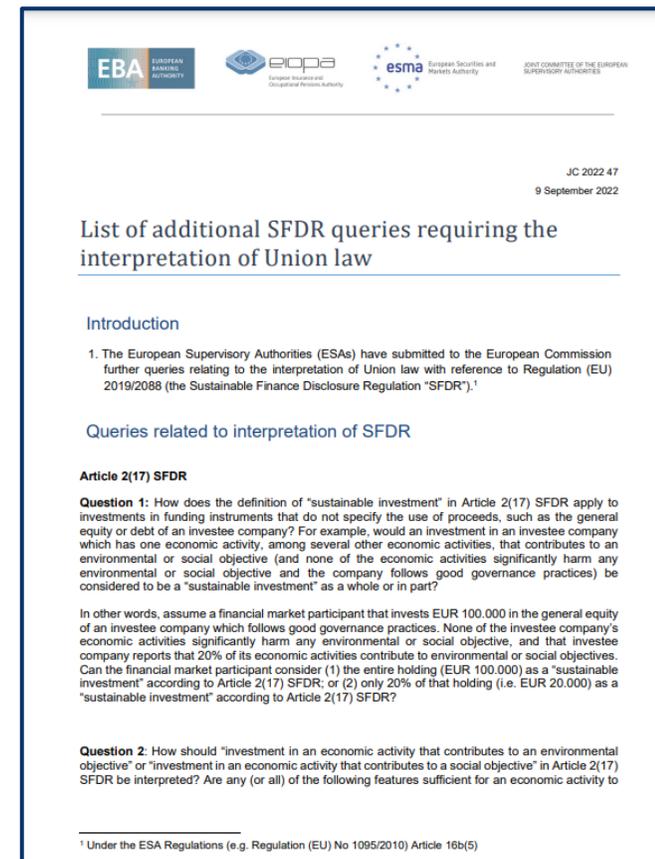
- On 9th September, the European Supervisory Authorities (ESAs) sent the European Commission a **series of questions that require an interpretation of the SFDR Level 1 text** – something only the Commission can provide.
- Significantly, the ESAs ask for clarifications in relation to the **concept of ‘sustainable investment’** as defined by Article 2(17) of SFDR.
- The definition is relevant in the context of **Article 9 products** (the portfolio of which must consist of 85%-90% sustainable investments). It is also relevant in the context of **MiFID II requirements** for gathering client sustainability preferences.
- The ESAs also ask about **the use of climate benchmarks for the purposes of Article 9(3)** – seeking a clarification as to whether all constituents of a climate benchmark would qualify as a ‘sustainable investment’.



SFDR - ESAs queries to the EU Commission

What qualifies as a “sustainable investment”?

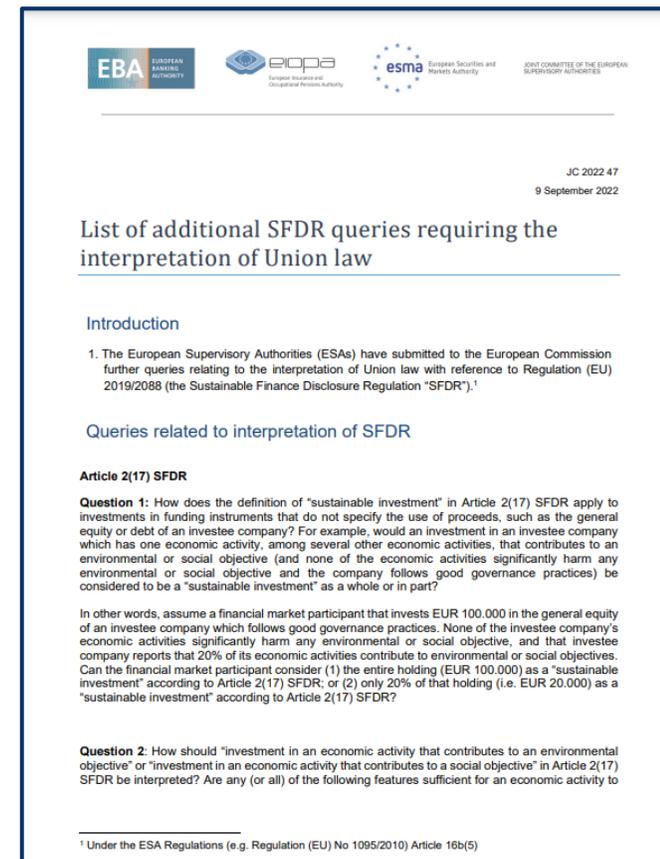
- The ESAs’ questions in relation to ‘sustainable investment’ are comprehensive.
- They ask whether FMPs should adopt **calculate the share of sustainable investments** in a product with the so-called ‘**whole investment**’ approach – whereby an equity holding would be considered a ‘sustainable investment in its entirety – or the so-called ‘**look through**’ or ‘**revenue weighted**’ approach – whereby only the ‘sustainable activities’ carried out by the investee company would be considered as the ‘sustainable investment’.



SFDR - ESAs queries to the EU Commission

What qualifies as a ‘sustainable investment’?

- The ESAs also ask whether an ‘economic activity’ must ‘contribute directly’ to an environmental or social goal to qualify as a ‘sustainable investment’, or whether an ‘economic activity’ carried out by a company in a more sustainably than their industry peers is eligible as a ‘sustainable investment’.
- Equally, the ESAs ask whether a company that has developed a transition plan may be considered a ‘sustainable investment’.
- In relation to Article 9(3), the ESAs also ask whether the constituents of Paris-aligned Benchmarks (PABs) and Climate-transition benchmarks (CTBs) automatically satisfy Article 2(17) and may be considered ‘sustainable investments’.



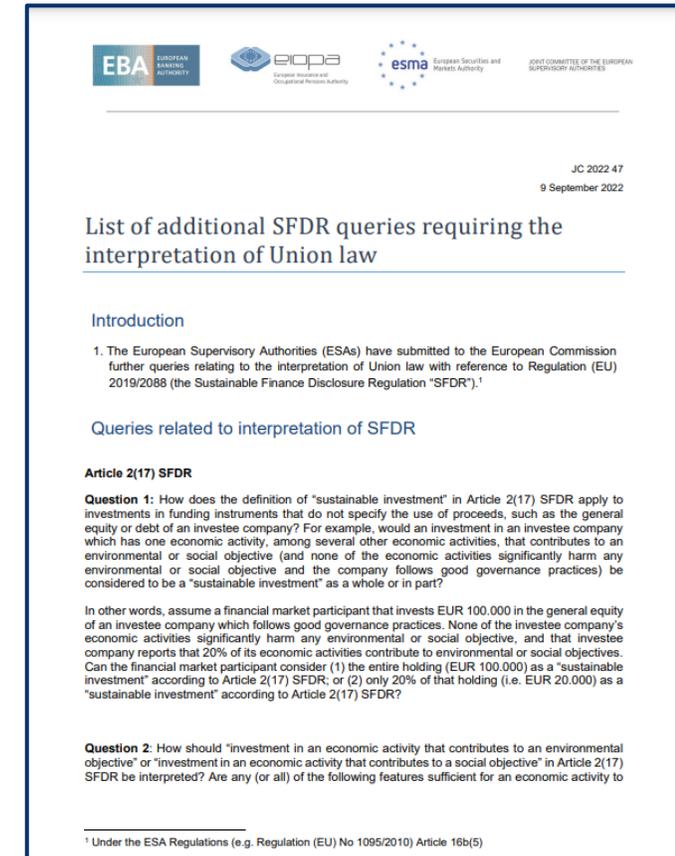
SFDR - ESAs queries to the EU Commission

Next steps

- The Commission is preparing its responses to the ESAs' questions.
- It is NOT clear when the Commission will respond. This is still the subject of internal debate within DG FISMA.

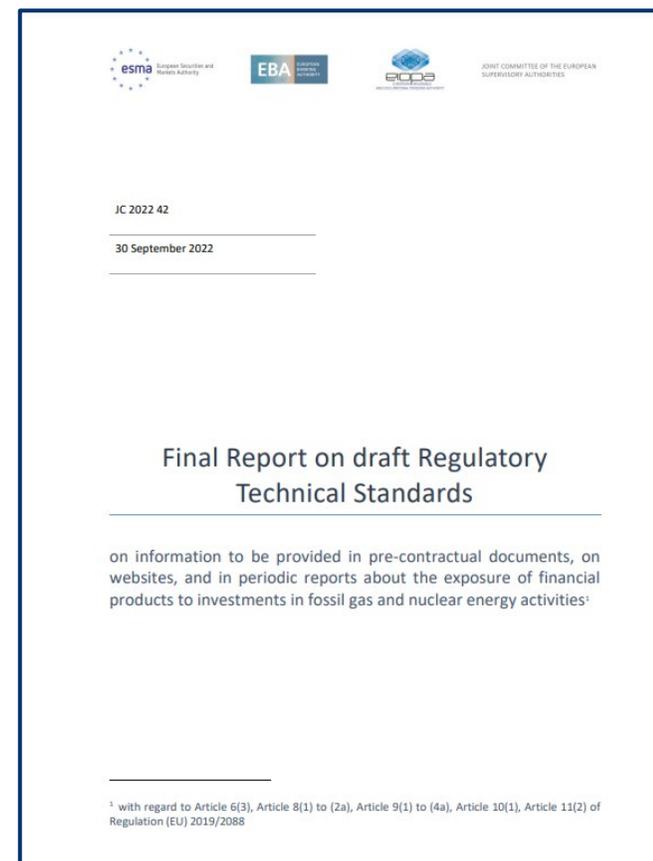
Related developments

- The ESAs are also expected to publish a separate Q&A on practical application of the SFDR at the end of October.



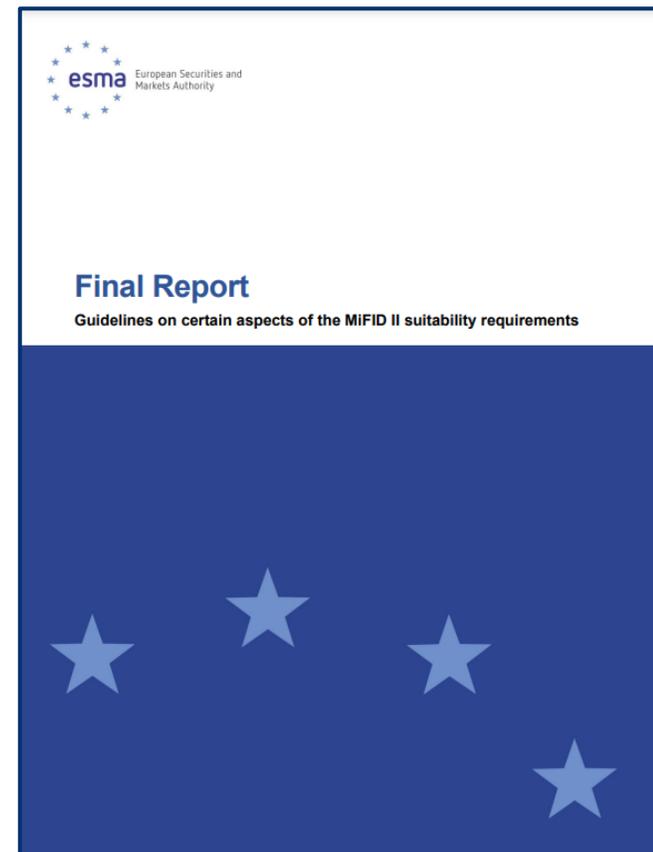
SFDR - RTS on natural gas & nuclear energy activities

- On 30th September, the ESAs published [draft Regulatory Technical Standards](#) (RTS) for **additional Taxonomy-related disclosures under SFDR**.
- The RTS will introduce additional disclosure requirements applicable to **Taxonomy-compliant natural gas & nuclear gas exposures**.
- These additional disclosures became necessary following the inclusion of gas & nuclear in the Taxonomy.
- The European Commission has **3 months in which to endorse the additional RTS and integrate them into the SFDR Delegated Regulation** (published in the Official Journal on 25th July). The ESAs have urged the Commission to do so quickly.



MiFID II - ESMA's guidelines on suitability assessment

- On 23rd September, ESMA published [updated Guidelines](#) on sustainability-related aspects of the MiFID II suitability assessment.
- The Guidelines provide instructions to national competent authorities & financial advisors on how client 'sustainability preferences' should be gathered.
- Most notably, the Guidelines introduce a **degree of flexibility with regard to how financial advisors approach gathering client 'sustainability preferences'**. For instance, with respect to soliciting the client to set a minimum proportion of Taxonomy-alignment or share of 'sustainable investments', ESMA now gives advisors the option to establish an **approximate minimum proportion of sustainable assets** rather than an exact percentage.



MiFID II - ESMA's guidelines on suitability assessment

Next steps

- The Guidelines will now be translated into all official EU languages – this may take a number of months depending on available resources. Typically, the National Competent Authorities (NCAs) are granted 2 months to indicate whether they intend to comply with the Guidelines.
- However, in this instance, given the challenges associated with applying the sustainable finance framework, **ESMA is granting 6 months.**



EU Green Bond Standard

State of play

Background

- **6 July 2021:** The EU Commission published a proposal for a regulation establishing a EU Green Bond Standard (EU GBS).
- **Mid-April 2022:** The EU Council agreed its position on the EU Commission's proposal.
- **Mid-May 2022:** The Economic and Monetary Affairs Committee (ECON) adopted the EU Parliament position.
- **July 2022:** The negotiations between the EU Commission, the EU Parliament and the EU Council (“trilogue”) started. Several technical meetings were held throughout September.

Main outstanding points

- Scope
- Allocation of proceeds & grandfathering
- Civil liability



The image shows a document cover page from the European Parliament. At the top left is the logo of the Council of the European Union with the text "Conseil de l'Union européenne". To the right, it says "Bruxelles, le 8 avril 2022 (OR, fr, en)". Below this, it reads "Dossier interinstitutionnel: 2021/0191 (COD)". On the right side, there is a large diagonal watermark that says "PUBLIC". Below the watermark, it lists "7379/22 ADD 1" and "LIMITE". Further down, it lists "EF 87", "ECOFIN 246", "ENV 247", "SUSTDEV 62", and "CODEC 326".

At the bottom of the page, it says "European Parliament 2019-2024" and "Plenary sitting". The date "20.5.2022" is on the left, and "A9-0156/2022" is on the right. The main title is "***| REPORT" followed by "on the proposal for a regulation of the European Parliament and of the Council on European green bonds (COM(2021)0391 – C9-0311/2021 – 2021/0191(COD))". At the bottom, it says "Committee on Economic and Monetary Affairs" and "Rapporteur: Paul Tang".

EU Green Bond Standard

State of play



Scope

The [EU Parliament](#) proposed to expand the objective of the regulation and introduce **disclosure requirements for all green bonds (GB) and sustainability-linked bonds (SLB)** that are marketed in the EU.

The disclosure requirements focus on the **issuers** and on the **bonds**.

Main arguments

- increase **transparency & prevent greenwashing** in the EU market of GB and SLB; provide investors with information on the **Taxonomy-alignment of GB**; ensure **comparability** between GB and between SLB.

Main counter-arguments of the other co-legislators

- The disclosure requirements **duplicate existing disclosure requirements** and increase the complexity of the regulatory framework;
- Additional disclosure requirements might **discourage the growth** of the market of GB and SLB;
- **Regulating the SLB is pre-mature** at the moment;
- Additional **verification requirements** from ESMA-registered reviewers might create organisational problems and increase costs.

EU Green Bond Standard

State of play



Grandfathering

- According to the EU Commission proposal, when the technical screening criteria of the EU Taxonomy are reviewed, the EU GBS have 5 years to adapt (e.g. unallocated proceeds must be allocated according to the new criteria).
- The EU Parliament proposed a 10-year limit in the case of financial claims.
- The Council wants to extend the grandfathering period from 5 years to unlimited.

Civil liability

- EU Commission: Issuers must declare in the prospectus that the EU GB is compliant with the EU GBS Regulation.
- EU Parliament amendment: Member States must ensure that civil liability is attached directly to the EU GBS Regulation.
- EU Council amendment: When a prospectus is not required, the reference to the EU GBS Regulation must be added in the legal documentation of the EU GB (e.g. terms and conditions).

Next steps

The next meetings are scheduled for 18 October and 16 November. An agreement is expected by the end of 2022.

Thank you & see you in November!

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