

1st December 2022

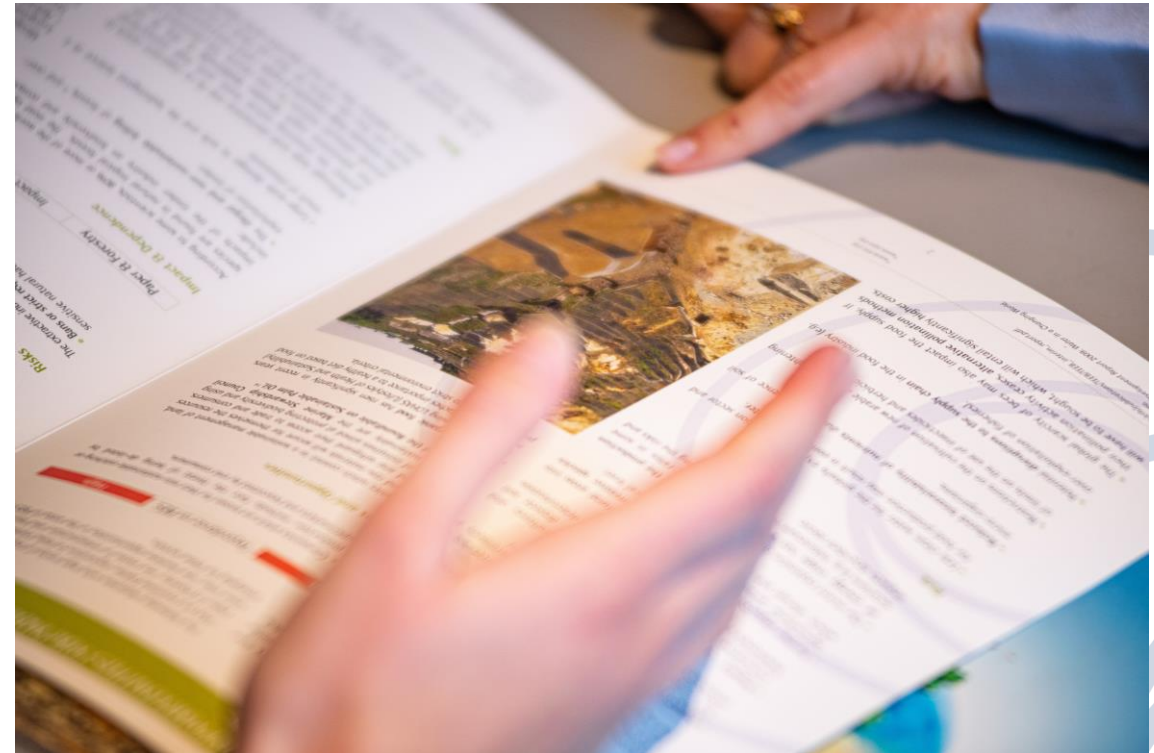
EU SUSTAINABLE FINANCE UPDATES

Eurosif
The European Sustainable Investment Forum

Agenda of this edition

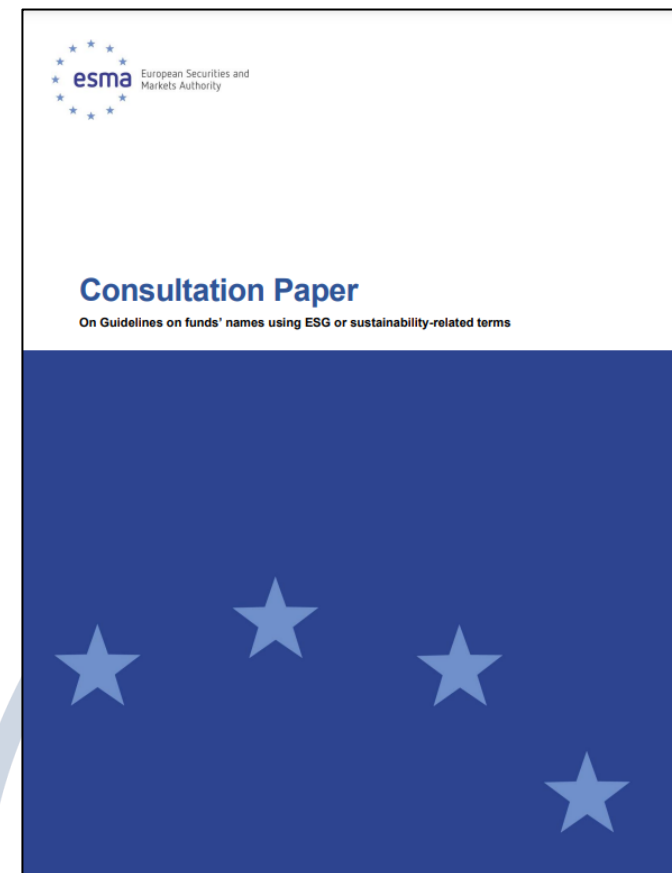
Thursday 1st December 2022

- ESMA draft Guidelines on use of ESG & sustainability-related terms in **fund names**
- ESAs Call for Evidence on **Greenwashing**
- **SFDR** – ESAs’ Q&As & delayed mandate to revise PAI framework
- **CSRD** – Final adoption & delivery of ESRS
- **CSDDD** – State of Play



ESMA draft guidelines on SFDR

- On 18th November, ESMA is consulting on draft [Guidelines](#) for the use of ESG & sustainability-related terms in fund names.
- ESMA envisages the introduction of quantitative thresholds for funds that make use of ESG-related terms or feature ‘sustainable’ in their name;
 - 80% of the investments of a fund **must be used to meet its environmental or social characteristic** (as set out in fund documentation) for the use of ESG-related terms in the name to be permissible;
 - 50% of investments must qualify as ‘sustainable investments’ as per Article 2(17) if the word ‘sustainable’ is featured in the name of the fund.
- ESMA is also proposing to **apply exclusion criteria** to the remaining assets of the fund to ensure certain safeguards and consistency across ESG and sustainable funds.



ESMA draft guidelines on SFDR

- ESMA proposes applying the exclusion criteria for EU Paris-aligned benchmarks as per Article 12 of Commission Delegated Regulation [\(EU\) 2020/1818](#)
- These exclusions are;
 - Companies involved in any activities related to **controversial weapons**;
 - Companies involved in the cultivation and production of **tobacco**;
 - Companies that are in **violation of the UN Global Compact** and/or OECD MNE Guidelines;
 - Companies that derive more than 1% of their revenues from exploration, mining, extraction, distribution or refining of **hard coal or lignite**;
 - Companies that derive more than 10% of their revenues from the exploration, extraction, distribution and refining of **oil fuels**;
 - Companies that derive more than 50% of their revenues from the exploration, extraction, manufacturing or distribution of **gaseous fuels**;
 - Companies that derive more than 50% of their revenues from **electricity generation** with a GHG intensity of more than 100g CO₂e/kWh



Call for Evidence on Greenwashing



- On 15th November, the ESAs issued a [Call for Evidence](#) on Greenwashing to gather feedback from the market as to the nature and extent of ‘greenwashing’.
- The Call for Evidence sheds light on the ESAs initial **concept of greenwashing** and how it can be experienced by different segments of the market.
- Interestingly, the ESAs outline that financial market participants (FMPs) can ‘trigger’ greenwashing, but FMPs can also be a ‘receiver’ of misleading claims and may inadvertently ‘spread’ or amplify said claims.



Call for Evidence on Greenwashing



The ESAs share their view on the core features of ‘greenwashing’;

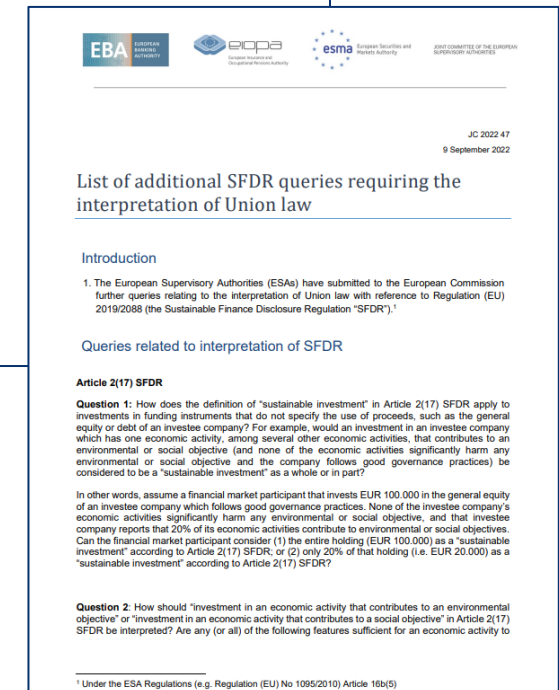
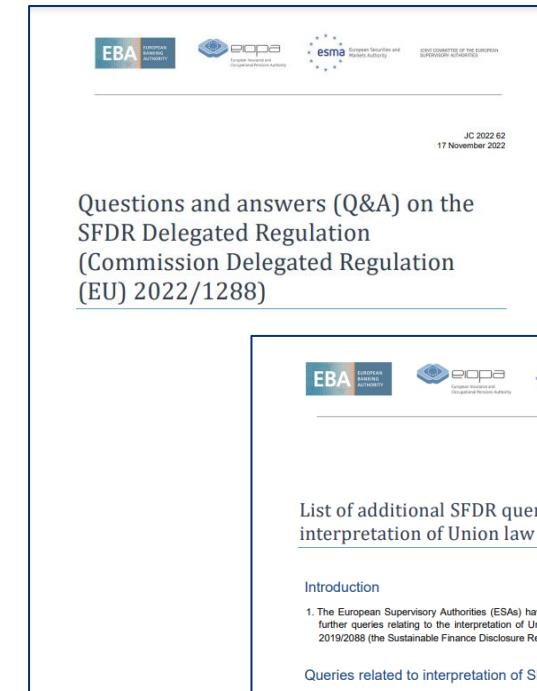
- Greenwashing can involve claims that are **misleading** due to **falsifications, exaggerations or omissions** in relation the sustainability profile of products or entities;
- Greenwashing can occur at **entity and/or product level**;
- Greenwashing can be both **intentional and unintentional**;
- Greenwashing can occur at any point in the lifecycle of a financial product or at any point of the investment value chain;
- Greenwashing may occur in specific disclosures required by EU regulation (**SFDR**) and may be perpetrated by entities currently not subject to EU regulatory requirements (**ESG ratings**).
- Greenwashing can be triggered directly by the entity to which sustainability claims relate or by third-parties;
- If not addressed, greenwashing will undermine trust in sustainable finance markets.



ESAs' Q&As & Queries



- On 17th November, the ESAs published joint Q&As to clarify application of SFDR technical requirements;
 - The Q&As provide practical instruction in relation to Taxonomy-related disclosures and the calculation of Principal Adverse Impacts (PAIs). They also clarify that **broad market indices cannot be used for the purposes of Article 9(3)** and that **asset managers may use their own criteria to qualify 'sustainable investments'**.
- The ESAs' joint Q&As should be distinguished from the Joint ESAs' Questions to the European Commission requesting interpretation of SFDR provisions;
 - Notably, these joint Questions request that the Commission provide clarity as to the assets that qualify as 'sustainable investments' in accordance with Article 2(17).



CSRD – Final adoption

In the EU Parliament



European Parliament

On 10th November the Directive was adopted by the EU Parliament in plenary session with a large majority (525 votes in favour, 60 votes against, and 28 abstentions).

In the Council of the EU



Council of the European Union

On 28th November the Directive received final approval by the Council. Following the Council's approval, the legislative act was adopted.

Next steps – After the signature by the President of the Parliament and the President of the Council, the Directive will be published in the Official Journal of the EU and will enter into force after 20 days. Member States will have 18 months to implement the rules.

Scope & timing for implementation

The first reports are due in:

2025 – large public-interest companies with more than 500 employees, already subject to NFRD → data on financial year 2024

2026 – large companies with more than 250 employees and/or €40 mln in turnover and/or €20 mln in total assets, that are not subject to the NFRD → data on f.i. 2025

2027 – listed SMEs (excluding micro enterprises) → data on f.i. 2026 (opt-out until 2028)

2029 – non-EU companies with net turnover above € 150 mln if they have at least one subsidiary or branch in the EU exceeding certain thresholds → data on f.i. 2028

CSRD - Delivery of the ESRSs

On 23rd November EFRAG delivered to the EU Commission the first set of sector-agnostic draft standards

The batch includes:

- 2 cross-cutting standards on “General requirements” and “General disclosures”
- and 10 topical standards on climate, environmental and social issues, and on governance.



Next steps

1st set ESRS – The EU Commission will consider the EFRAG’s proposed standards and consult relevant EU authorities and bodies. A call for feedback will be open in March 2023. The standards are expected to be adopted by **June 2023** in the form of a **delegated act**.

2nd set ESRS – EFRAG will focus on a 2nd set of ESRS, which will include **sector specific standards** (agri, coal mining, mining, oil & gas, energy production, road transport, motor vehicle production, food/beverages, textiles), and **standards for SMEs**.

The 2nd set is due by November 2023, and the EU Commission is expected to adopt it by **June 2024**.

CSRD - Delivery of the ESRs

What changed as compared to the exposure drafts that were subject to public consultation (April – August 2022):

- The **overall structure and the contents of the requirements were streamlined**. For instance, some disclosure requirements were merged, and the wording was simplified. The distribution of the requirements across the two cross-cutting standards and the topical standards, as well as across the main body of the standards and the “Application Requirements” is clearer.
- Improvements were made to **increase the interoperability of the structure and the alignment of key concepts with international standards**, such as: the Task Force on Climate-related Financial Disclosures (TCFD) recommendations, the International Sustainability Standards Board (ISSB) standards, the Global Reporting Initiative (GRI) standards and the OECD and UN guidelines on due diligence.
- The **concept of “rebuttable presumption” was replaced** by a system centred on the materiality assessment by the reporting companies; certain disclosures are considered as always material and must be always reported (e.g. climate change, Taxonomy-alignment, SFDR, etc.).
- Several disclosure requirements have been **phased-in, deleted, or reconsidered for sector-specific standards**, including certain climate change-related metrics (e.g. quantitative locked-in emissions in transition plans; avoided GHG emissions).

CSDDD – State of Play

In the EU Parliament

- Committee responsible: **Committee on Legal Affairs (JURI)**
- 17th November: report by JURI rapporteur Lara Wolters (S&D)
- 30th November: deadline for tabling amendments in JURI
- 30th November: 198 amendments tabled by the EPP



Treatment of financial services:

- **Rapporteur's report**: broadened the scope regarding definition of value chain
- **EPP's amendments**: financial undertakings are exempted; the value chain of financial institutions is identified only in the clients receiving the loan, the credit or other financial services

Next steps – March 2023: expected vote in JURI

CSDDD – State of Play

In the Council of the EU

- 25th November: Member States made **progress towards a general approach**; some issues, including the treatment of financial services, needed further discussion.
- 1st December: At the **Competitiveness Council** (Internal market and industry) Member States reached a general approach.

Treatment of financial services:

The compromise text leaves **out of the scope financial products** (i. e. alternative investment funds and UCITS). Member States were provided with an option not to apply the CSDDD to pension institutions that are considered to be social security schemes under applicable EU law.



**Council of the
European Union**



Thank you & see you in 2023!

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