

Joint ESAs technical standards on ESG disclosures

September 2020



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Sustainable finance disclosure regulation - introduction

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- ❑ Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector sets out ESG disclosure requirements for a broad range of financial market participants, financial advisers and financial products supplementing existing rules.
- ❑ The aim of this regulation is to strengthen protection for end-investors and improve disclosures to them.
- ❑ EBA, EIOPA and ESMA (the ESAs) - through the Joint Committee - have been empowered by the regulation to deliver a significant number of draft Technical Standards, including six draft Regulatory Technical Standards (RTS).
- ❑ In addition, the Taxonomy Regulation has added many new empowerments in the disclosure regulation, including on do not significantly harm and on product-related taxonomy disclosures.
- ❑ On 23 April 2020 the ESAs published a [consultation paper](#) presenting draft RTS under seven disclosure regulation empowerments, the consultation closed on 1 September 2020.



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Entities, products and services covered by disclosure regulation

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- ❑ Entities covered by the regulation: asset managers (regulated by UCITS, AIFMD, EuVECA, EuSEF), insurance undertakings (Solvency II), occupational (IORPs) and personal pension providers, investment firms and credit institutions providing individual portfolio management (MiFID II and CRR).
- ❑ Products covered include a wide range of financial products offered by these entities, including insurance based investment products made available to investors and individual portfolio management.
- ❑ Advice covered includes investment and insurance advice (MiFID II and IDD).

Areas covered by the consultation paper

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□ The consultation paper covers seven empowerments for RTS which can be broadly divided into two themes:

1. Adverse impact reporting at entity level: disclosures of principal adverse impacts of investment decisions on sustainability factors – including detailed indicators for environmental and social impacts; and
2. Pre-contractual, website and periodic product disclosure: applicable to products with either environmental or social characteristics (“light green) or with sustainable investment objectives (“dark green”).

Entity disclosure of principal adverse impacts of investment decisions

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- ❑ The principal adverse impacts that investment decisions have on sustainability factors should be disclosed on the website of the entity.
- ❑ The consultation paper proposes rules for how this public disclosure should be done.
- ❑ The disclosure should take the form of a statement on due diligence policies with respect to the adverse impacts of investment decisions on sustainability factors, showing how investments adversely impact indicators in relation to:
 1. climate and the environment; and
 2. social and employee matters, respect for human rights, anti-corruption and anti-bribery matters.
- ❑ The ESAs have included draft indicators for adverse impacts, based on consultations with the Joint Research Centre of the European Commission and the European Environment Agency.
- ❑ The ESAs have also proposed a harmonised reporting template in Table I of Annex I to the draft RTS.

Indicators for principal adverse impact disclosure

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- ❑ The consultation paper proposes 32 indicators that would always lead to principal adverse impacts and would therefore always be disclosed. Therefore these indicators are “mandatory”.
 - These are sub-divided into 16 environment and climate related indicators (divided into greenhouse gas emissions, energy performance, biodiversity, water, and waste) and 16 indicators relating to social and employee matters, respect for human rights, anti-corruption and anti-bribery matters.
- ❑ The consultation paper also proposed additional, “opt-in”, indicators, from which financial market participants must choose at least one environmental and one social indicator to include in their disclosure.
 - The consultation paper has eleven environmental and seven social indicators to be included on this “opt-in” basis.
- ❑ Financial market participants are allowed to include additional indicators for principal adverse impact not listed in the Annex.

Product disclosures - introduction

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- ❑ The environmental or social characteristics, or sustainable investment objectives of financial products should be disclosed in their pre-contractual and periodic documentation and on their website.
- ❑ The proposals included in the draft RTS indicate the rules for how this disclosure should be carried out, ensuring transparency to investors regarding how products meet their sustainability characteristics or objectives.
- ❑ The consultation paper also sets out the additional disclosures that should be provided by products that have designated an index as a reference benchmark.
- ❑ The ESAs have also proposed provisional provisions on the “do not significantly harm” principle stemming from a new empowerment added by the taxonomy regulation.
- ❑ **Templates:** while the ESAs are proposing to create templates for pre-contractual and periodic product disclosures in order to ensure comparability of disclosures, the uncertainty regarding the content of pre-contractual disclosures has led to a delay in drafting the templates. A separate process has been undertaken by the ESAs to prepare the templates.

Pre-contractual product disclosure

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- ❑ The pre-contractual product disclosure has to take place through existing sectoral disclosure documents as listed in Article 6(3) of the disclosure regulation.
- ❑ The consultation paper sets out the elements that should be included in this disclosure.
 1. The sustainable characteristics or sustainable investment objective of the product;
 2. How the product does not significantly harm sustainable investment objectives;
 3. A description of the investment strategy;
 4. A list of the sustainability indicators used;
 5. Whether derivatives are used to attain the characteristics or objective;
 6. A reference to a website for more disclosure; and
 7. Information for products designating an index as a reference benchmark on how the product is aligned with the benchmark and how the benchmark differs from a broad market index.

Public website product disclosure

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- ❑ The consultation paper sets out provisions for product manufacturers of sustainable products to disclose on their website in greater detail how the products meet their characteristics or objectives. The disclosure has to start with a short summary.
- ❑ The disclosure items should include many of the same disclosure items, in more detailed form, that are included in the pre-contractual disclosures.
- ❑ Website disclosure also includes requirements to disclose details on the methodology and data sources used and any limitations to the methodology or data sources.

Periodic product disclosure

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- Periodic product disclosure requirements are intended to show the track record of the product in terms of how successful it is in attaining its sustainable characteristics or objectives.
- The disclosure has to take place through existing periodic disclosure sectoral disclosure documents as listed in Article 11(2) of the disclosure regulation.
- The consultation paper requires the following items to be disclosed:
 1. How the sustainable characteristics or objectives have been met;
 2. How the product did not harm significantly sustainable objectives;
 3. The top 25 holdings of the product;
 4. For products designating an index as a reference benchmark, the sustainable performance of that index;
 5. Proportion of sustainable investments; and
 6. Actions taken to attain the sustainable characteristics and objectives.

Procedure and timing

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- ❑ Public Consultation on ESG disclosure RTS from **23 April to 1 September 2020**;
- ❑ ESAs to deliver final report with RTS to the Commission: **January 2021**;
- ❑ Most provisions of disclosure regulation, including RTS, will apply from **10 March 2021**;
- ❑ Taxonomy RTS to be delivered to COM by **June 2021 and June 2022** (but **DNSH RTS 30 December 2020**).