

CLIENT BULLETIN

SFDR and Taxonomy Regulation deadlines – A compliance checklist for private banks, wealth managers and advisers

7 October 2021

Speed read

A number of deadlines are looming for private banks, wealth managers and advisers as the next stage of the EU's Sustainable Finance Disclosure Regulation (**SFDR**) and Taxonomy Regulation begins to apply – this briefing gives a snapshot on what is required and when.

How did we get here?

The Sustainable Finance Disclosure Regulation 2019/2088 was adopted on 27 November 2019,¹ and began to apply on 10 March 2021.

A final report on draft regulatory technical standards was published by the European Supervisory Authorities (ESAs) on 4 February 2021 (the RTS)² – this is now being considered by the European Commission.

On 15 March 2021, the ESAs published for consultation a new draft RTS for SFDR and the Taxonomy Regulation, including a consolidated version of the RTS, amended to incorporate Taxonomy Regulation requirements.³

The RTS were initially expected to come into effect on 1 January 2022, but in a letter dated 8 July 2021, the Director-General for Financial Stability, Financial Services and Capital Markets Union of the European Commission indicated a delay to the start date of the RTS of 6 months. That is, rather than beginning to apply on 1 January 2022, the RTS is proposed to now begin to apply from 1 July 2022. **It is not yet clear if this will mean a delay of 6 months to all the other dates relevant to SFDR and the Taxonomy Regulation; so far, we are taking a conservative approach and assuming that only the start date is affected.** But this is to be confirmed and the industry may of course prefer that all relevant dates are pushed back.



¹ For a copy see <https://eur-lex.europa.eu/eli/reg/2019/2088/oj>, or for a consolidated version, see <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02019R2088-20200712>.

² For a copy see https://www.esma.europa.eu/sites/default/files/library/jc_2021_03_joint_esas_final_report_on_rts_under_sfdr.pdf

³ For a copy see <https://www.esma.europa.eu/press-news/consultations/joint-consultation-taxonomy-related-sustainability-disclosures>

For private banks, wealth managers and advisers, what has already come into force?

SFDR and relevant aspects of the Taxonomy Regulation are coming into force in stages. For firms subject to SFDR:

March 2021

- Firms were required to make certain pre-contractual and website disclosures – as summarised in the first row in Schedule 1 to this bulletin.
- These disclosures could be prepared in line with the SFDR Level 1 requirements. In other words, firms could largely ignore the detailed draft RTS requirements, including the prescribed templates.

30 June 2021

- The principal adverse impacts (PAI) regime effectively operates on an “opt in” or “opt out” basis – ie a firm can positively opt to consider the principal adverse impacts of its investment decisions on sustainability factors (posting an appropriate disclosure on its website) OR it can opt **not** to consider such matters (in which case it basically posts a disclosure on its website saying as much and why).
- BUT on 30 June 2021, the ability to “opt out” fell away for larger firms – eg firms with more than 500 employees. The upshot is that, if you are a larger firm, you had to have posted a full disclosure compliant with the PAI regime on your website by 30 June 2021, if you had not done so already.

For a copy of our briefing on the PAI regime, see [here](#).⁴

What private banks, wealth managers and advisers have to do next, and when?

A high level timeline explaining what a firm has to do next under SFDR and relevant aspects of the Taxonomy Regulation, is set out in Schedule 1.

Taxonomy Regulation

Taking a step back, what you have to do next looks different depending on whether you are caught by the detailed new product disclosure requirements of the Taxonomy Regulation – but this only applies to a very specific and limited sub-set of financial products and is coming into force in phases over the next few years.

To make this clear, in Schedule 1, we have shaded the rows that **only** apply if you have a financial product caught by the detailed taxonomy requirements. Ignore these rows if you have no such products.

What is the purpose of these taxonomy disclosures?

In general terms, the purpose of the Taxonomy Regulation is to develop a common understanding as to whether and to what extent a company, product etc is “green” under an agreed definition as to what “green” really means.

Taking this one step further, the purpose of the detailed taxonomy disclosure requirements for financial products is basically to make transparent how much of the product’s portfolio is considered “green” under the taxonomy – in particular, in graphical form. Part of the goal here is to ensure this disclosure is readily understandable – as well

as enabling one product to be compared side by side with another where they each claim to be “green” or have a “green component”.

What financial products are subject to the detailed taxonomy disclosure requirements?

If the financial product:

- falls within Article 9 of SFDR and invests in an economic activity that contributes to an environmental objective; or
- falls within Article 8 of SFDR and invests in sustainable investments with an environmental objective,⁵

PLUS the environmental objective/s match those specified in the Taxonomy Regulation. NB: The Taxonomy Regulation identifies six environmental objectives, with the first two (relevant from 1 January 2022) being climate change mitigation and climate change adaptation. The others (relevant from 1 January 2023) are the sustainable use and protection of water and marine resources, the transition to a circular economy, pollution prevention and control, and the protection and restoration of biodiversity and ecosystems. Please refer to Schedule 2 for a detailed flowchart detailing the application of the requirements.

If you have no financial products satisfying these criteria, the detailed taxonomy disclosure requirements do not apply to you and you can ignore all the rows shaded in Schedule 1

⁴ <https://www.allenoverly.com/en-gb/global/news-and-insights/publications/new-sfdr-principal-adverse-impacts-or-pai-regime-key-points>

⁵ Note the following from the same ESA consultation: “The ESAs’ draft RTS provide for the content and presentation of additional information to the SFDR product disclosures where the product makes sustainable investments contributing to environmental objectives. This CP proposes a set of amending Articles for products making sustainable investments, more specifically investing in activities having environmental objectives in compliance with the TR. The amendments are particularly targeted at Article 9 SFDR products but are also relevant for Article 8 SFDR products that intend to make sustainable investments in environmental objectives in compliance with the TR” (paragraph 10, emphasis added).

Worked examples

<p>I am a private bank with financial products that falls within Article 6 SFDR only.</p>	<p>– Ignore all the rows shaded in Schedule 1.</p> <p>Note: None of the detailed Taxonomy Regulation product disclosure requirements apply to you, although there is one Taxonomy Regulation boilerplate disclosure you need to make in some of your financial product documents, as explained in Schedule 1.</p>
<p>I am a private bank with products that fall within Articles 6, 8 and 9 SFDR. None have environmental objectives or promote environmental characteristics.</p>	<p>– Ignore all the rows shaded in Schedule 1.</p> <p>Note: As above.</p>
<p>I am a private bank with financial products that fall within Articles 6, 8 and 9 SFDR. Those that fall within Article 8 SFDR promote social characteristics. For the Article 9 SFDR products, some have a social objective and some have an environmental objective.</p>	<p>– For all your Article 6 and 8 financial products, ignore the rows shaded.</p> <p>– For your Article 9 financial products with environmental objectives:</p> <ul style="list-style-type: none"> – check if the product is investing in an economic activity that contributes to an environmental objective that matches any of the six environmental objectives specified in the Taxonomy Regulation, as above; – if yes, look at the rows shaded in Schedule 1 for those financial products. <p>If the answer is no for any Article 9 product, ignore the rows shaded for that product.</p> <p>NB: As above, the taxonomy requirements are coming into force in phases over the next few years. Eg in very general terms, if your financial product’s environmental objective/s comprise climate change mitigation and/or climate change adaptation, you will need to make new disclosures under the RTS for 1 July 2022 at minimum – and possibly include high level disclosures as per the Level 1 taxonomy requirements by 1 January 2022.</p> <p>If the environmental objective/s comprise any of the other environmental objectives prescribed in the Taxonomy Regulation, you will need to make new disclosures under the RTS for 1 July 2023.</p>
<p>I am a private bank with a financial product that falls within Article 8 SFDR because it promotes environmental characteristics.</p>	<p>– The fact that an Article 8 financial product has environmental characteristics does not itself “turn on” the detailed taxonomy product disclosure requirements.</p> <p>– These are only “turned on” for an Article 8 financial product that invests in sustainable investments with an environmental objective PLUS the objective matches one of the six environmental objectives specified in the Taxonomy Regulation (as above).</p> <p>– If the answer is yes on both fronts, look at the rows shaded in Schedule 1.</p>

Which of my financial products fall within article 6 vs article 8?

One of the most difficult issues under SFDR has been identifying “where to draw the line” between a product subject to Article 8 of SFDR because it can be considered to promote environmental (E) or social (S) characteristics, vs a product that falls outside this regime and only falls within Article 6 of SFDR. In the absence of regulatory guidance, firms have had to take their own view on this point, but across the industry as a whole, there is no clear industry consensus and different firms have taken different views.

Given that firms must begin to use with detailed new SFDR disclosure templates for Article 8 financial products from 1 July 2022, it will be more important than ever for firms to have a clear basis for the way they have classified their products for SFDR purposes.

SFDR classification process

In our view, in the absence of further regulatory guidance, a sensible process is as follows:

Question	Outcome
<p>(1) Does the product meet the following two tests:</p> <ul style="list-style-type: none"> – Does it promote environmental (E) or social (S) characteristics? (the characteristics test). – Do the companies in which the investments are made follow good governance practices? (the governance test) <p>In shorthand, this can be described as follows: Article 8 = E or S + G.</p>	<p>If yes, it is an Article 8 product.</p> <p>If no, it is an Article 6 product.</p> <p>If it is unclear if the characteristics test is met, go to the further questions below.</p>
<p>Further questions in relation to the characteristics test</p>	
<p>(2) Is the product “put forward” as having environmental (E) or social (S) characteristics, even if it can/does also invest in other things that do not relate to environmental or social matters?</p> <p>In considering this question, consider the terms of the investment objectives/mandate and objectives for the product, as well as marketing materials etc.</p>	<p>If yes, the answer to the characteristics test is yes.</p> <p>If no, the answer to the characteristics test is no.</p> <p>If the answer is not certain, go to the next question.</p>
<p>(3) Where it is not clear as to how to categorise a particular product, in our view, a common sense approach should be taken (which reflects the position outlined in the Commission Q&A document⁶). For example:</p> <ul style="list-style-type: none"> – Step into the shoes of an ordinary potential client/investor looking at the product in the sales/marketing process and considering making an investment. – Get a copy of the product documents that the client/investor will typically receive in that process. – Ask what the gist of the product is, or, put in a different way, what the client/investor would consider to be “on the tin” – and on that basis, whether, looking objectively at the product, it can be considered to have environmental (E) or social (S) characteristics. 	<p>If yes, the answer to the characteristics test is yes.</p> <p>If no, the answer to the characteristics test is no.</p>

NB: In our view, a financial product should only be considered to satisfy the characteristics test if it has environmental or social characteristics that may together be considered to comprise a material feature in relation to the relevant product, considered as a whole; eg characteristics that are likely to have a meaningful impact on the composition of a particular portfolio. Put another way, in our view, matters of an immaterial

nature or trivial impact can be ignored for the classification process. This is illustrated by the examples set out below. There is no guarantee that this view will be accepted by the Commission or ESAs, but in our view, this is consistent with the policy objective underlying Articles 8 and 9 of SFDR – ie to steer private capital into investments to help “green” the EU and address greenwashing risk.

⁶ For a copy see: https://www.esma.europa.eu/sites/default/files/library/sfdr_ec_qa_1313978.pdf

Worked examples

A small number of worked examples in the context of AIFs are set out below to illustrate the way we approach SFDR classification. However, detailed advice on “where to draw the line” between Article 6 and Article 8 of SFDR is beyond the scope of this bulletin. If you would like further advice, please let us know.

Worked examples	SFDR categorisation
<p>Example 1 – An AIF’s investment objectives exclude investments in tobacco. It has no other environmental (E) or social (S) characteristic. The tobacco exclusion is irrelevant in practice because, given its objectives/strategy, the AIFs portfolio managers will never consider making any investments in tobacco.</p>	<p>In our view, this AIF would fall within Article 6 rather than Article 8 of SFDR. This is because, if the impact of the exclusion on the likely composition of the AIF’s portfolio is limited in practice, it should not be considered sufficient alone to make the portfolio an Article 8 product. In other words, as explained above, we take the view a materiality threshold should apply and an exclusion with a negligible impact on the composition of the portfolio in practice is not likely to meet this threshold in practice. But we cannot rule out that the European Commission or ESAs may take a different view.</p>
<p>Example 2 – A real estate AIF’s investment objective is to build residential buildings with specific “green” characteristics, although up to 20% of its investment portfolio may be invested in “non-green” projects.</p>	<p>In our view, this AIF would fall within Article 8 of SFDR (subject to the governance test).⁷</p>
<p>Example 3 – A real estate AIF’s investment objective is to build residential buildings, with at least 20% of the AIF’s projects by value having to comply with specific “green” characteristics. The rest can be “non-green”.</p>	<p>In our view, this AIF would fall within Article 8 of SFDR (subject to the governance test).⁸</p> <p>In our view, this AIF would fall within Article 8 of SFDR (subject to the governance test).</p> <p>20% is sufficient to be able to say the AIF has environmental (E) characteristics. Eg in our view, if the environmental characteristics of an AIF are material (or put another way, not trivial or immaterial), it is sufficient to cause the AIF to fall within Article 8.</p> <p>In other words, the “green” component of the AIF does not have to comprise a majority of its assets before it falls within Article 8. Rather, a much lower bar applies.</p>

⁷ Further advice on this is available on request.

⁸ As above.

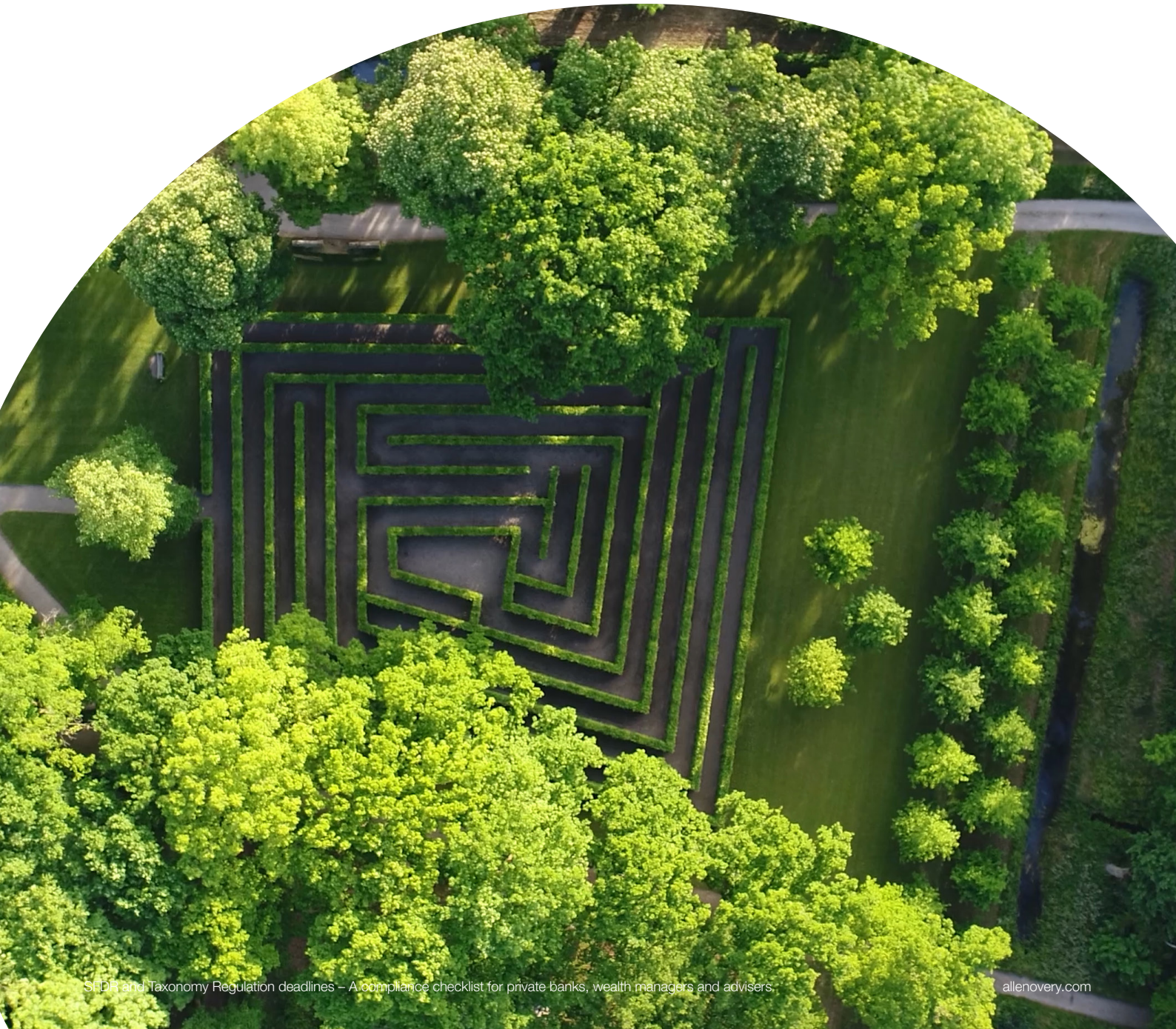
Next Steps

The European Commission is expected to finalise the RTS shortly. The European Commission and/or the ESAs may also issue guidance on SFDR; in particular, to clarify the timing issues explained above.

If you have any questions on the new requirements mentioned above or SFDR generally, please get in touch with your usual A&O contact.

Key Reference Materials

- For a copy of SFDR, [click here](#), or for a consolidated version, [click here](#).
- For a copy of the Taxonomy Regulation, [click here](#)
- For a copy of the RTS, [click here](#)
- For a copy of the RTS as amended for the Taxonomy Regulation, [click here](#)
- For a copy of the guidance issued on various timing issues, [click here](#)



Schedule 1

SFDR timeline for private banks, wealth managers and advisers that are subject to SFDR⁹

References in this matrix to “firms”/“products” mean those subject to SFDR, and “RTS” mean the SFDR RTS as amended for the Taxonomy Regulation – ie. the final RTS will cover both SFDR and relevant taxonomy Level 2 requirements. Note also that, if a row below is shaded, it only applies to those of your products (if any) caught by the detailed taxonomy

product disclosure requirements. Ignore these rows if you have no such products. You can also ignore the PAI requirements below if you are a firm that does not consider PAI and (in general terms) have less than 500 employees.

Time	Legislation	Requirement(s)	Pre-contractual disclosure	Website disclosure	Periodic reports	Legislative reference
10 March 2021	SFDR	<p>Entity and product level disclosures: Various requirements began to apply for relevant firms:</p> <ul style="list-style-type: none"> – Website disclosure re sustainability risk (Article 3). – Subject to an “opt out”, website disclosure re principal adverse impacts (PAI) (Article 4). – Website disclosure re sustainability risk in remuneration policy (Article 5) – Pre-contractual product disclosure re sustainability risk (Article 6) – Pre-contractual product disclosure for firms that do not consider PAI (Article 7(2)) – Pre-contractual product disclosures for Article 8 and 9 products (Articles 8 and 9) – Website disclosures of product level information in relation to Article 8 and 9 products (Article 10) – including a description of the environmental (E) or social (S) characteristics (for Article 8 products) or sustainable investment objectives (for Article 9 products), and information on methodologies, impact, data sources, screening criteria, sustainability indicators etc, PLUS the disclosures referred to in Articles 8 and 9 and (when available) Article 11 (periodic reports) <p>NB: Only comply with Level 1 SFDR – largely ignore the draft Level 2 SFDR requirements.</p>	●	●		Articles 3-13 SFDR
Ongoing from 10 March 2021	SFDR	<p>Marketing: Continue to review marketing communications to ensure they do not contradict any information disclosed under SFDR</p>				Article 13 SFDR
Ongoing from 10 March 2021	SFDR and Taxonomy Regulation	<p>For Article 8 and Article 9 products:</p> <ul style="list-style-type: none"> – Begin to collect data on/from 10 March 2021 to include in periodic reports. – For more on this, see below. <p>NB: Periodic reports must comply with the SFDR Level 1 prescribed requirements from 1 January 2022 and the RTS requirements from 1 July 2022 (for more on this see below). This means that firms must draw up in 2022 respective periodic reports in compliance with the RTS, irrespective of reference periods. For the first report, firms should therefore compile information from 10 March 2021, and clarify the reference period the data covers.¹⁰</p>			●	Article 11 SFDR, Taxonomy Regulation and RTS

⁹**Uncertainty re push back of RTS start date:** In a letter dated 8 July 2021, the European Commission indicated a delay to the start date of the RTS of 6 months. That is, rather than beginning to apply on 1 January 2022, the RTS is proposed to now begin to apply from 1 July 2022. It is not yet clear if this will mean a delay of 6 months to all the other dates relevant to SFDR and the Taxonomy Regulation; so far, we are taking a conservative approach and assuming that only the start date of the RTS is affected. But ideally, all relevant dates would similarly be pushed back.
¹⁰ https://www.esma.europa.eu/sites/default/files/library/jc_2021_06_joint_esas_supervisory_statement_-_sfdr.pdf

Time	Legislation	Requirement(s)	Pre-contractual disclosure	Website disclosure	Periodic reports	Legislative reference
30 June 2021	SFDR	Entity level PAI disclosure – PAI “opt out” for larger firms fell away – ie if they had not made a positive PAI disclosure before, they must have done so by this date		●		Articles 4 SFDR
	SFDR	Product level PAI disclosure – Update or delete any disclosure previously made in a pre-contractual document to the effect that PAI is not considered, if this is out of date because the “opt out” was previously used but has fallen away	●			Article 7(2) SFDR
1 Jan 2022 ¹¹	Taxonomy Regulation	For any of your products that do not fall within Article 8 or 9 SFDR – Include in the product’s pre-contractual disclosures and periodic reports the following statement: <i>“The investments underlying this financial product do not take into account the EU criteria for environmentally sustainable economic activities.”</i> NB: You may also wish to consider including this boilerplate disclosure in the product documents for your Article 8 and 9 SFDR products as well, if no detailed taxonomy product disclosure requirements apply for them – ie to make the position clear.	●		●	Article 7 Taxonomy Regulation
In periodic reports issued between 1 Jan and 30 June 2022	SFDR and RTS	For your Article 8 and 9 products (if any) – periodic reports issued during this period (only): – Include prescribed new disclosures in periodic reports, but in line with the Level 1 SFDR requirements only – For Article 8 products, as to the extent to which the relevant environmental (E) or social (S) characteristics are met. – For Article 9 products, as to: (a) the overall sustainability-related impact of the product by means of relevant sustainability indicators; or (b) where an index has been designated as a reference benchmark, a comparison between the overall sustainability-related impact of the product with the impacts of the designated index and of a broad market index through sustainability indicators. Essentially this requires transparency as to the success of the product in attaining its E/S characteristics or sustainable investment objective. – This can be done in high level terms, as the detailed requirements of the RTS will not yet apply – ie in our view, you can ignore the draft RTS and templates NB: Subject to regulatory guidance, periodic reports must comply with the prescribed requirements from (we assume) 1 January 2022 in compliance with SFDR Level 1, and from 1 July 2022 in compliance with the RTS (ie Level 2). This means that firms must draw up in 2022 respective periodic reports in compliance with the RTS, irrespective of reference periods. For the first report, firms should therefore compile information from 10 March 2021, and clarify the reference period the data covers.			●	Article 11 and 20(3) SFDR
1 Jan 2022 but TBC by European Commission ¹²	Taxonomy Regulation and RTS	If you have an Article 9 product that invests in an economic activity that contributes to an environmental objective OR an Article 8 product that invests in sustainable investments with an environmental objective, PLUS the environmental objective/s is one or both of the following: (a) climate change mitigation (b) climate change adaptation The timing here is unclear. Strictly speaking, relevant pre-contractual and periodic disclosure requirements under Level 1 of the Taxonomy Regulation apply from 1 January 2022. However, the Level 2 RTS is yet to be finalised, and their application is currently expected to be delayed until 1 July 2022. There are therefore two scenarios for products falling in the scope of this row, in terms of their implementation work: Scenario 1 – only comply with the detailed requirements on/from 1 July 2022, in the hope that, because Level 2 is being delayed, the European Commission will delay the Level 1 requirements as well (or possibly provide regulatory forbearance). Scenario 2 – comply with Level 1 on/from 1 January 2022, ignoring the Level 2 requirements, and update the relevant disclosures to track the Level 2 requirements on/from 1 July 2022 when (we expect) the RTS will come into force. In the absence of regulatory guidance, firms must take a commercial decision on this at present. The rest of this matrix assumes Scenario 1. If you wish for further advice on this, please let us know and we would be happy to assist further.	●	●	●	Articles 5 and 6 Taxonomy Regulation

11_See the point above marked “Uncertainty re push back of RTS start date” – this applies equally to this row.

12_As above.

Time	Legislation	Requirement(s)	Pre-contractual disclosure	Website disclosure	Periodic reports	Legislative reference
1 July 2022	Taxonomy Regulation and RTS	<p>If you have an Article 9 product that invests in an economic activity that contributes to an environmental objective OR an Article 8 product that invests in sustainable investments with an environmental objective, PLUS the environmental objective/s is one or both of the following: (a) climate change mitigation (b) climate change adaptation.</p> <p>– Prepare pre-contractual disclosures in line with the Taxonomy Regulation and RTS.</p> <p>Which funds does this apply to from 1 July 2022? It only applies to certain products with “green” objectives or characteristics:</p> <p>– The Taxonomy Regulation identifies six environmental objectives, with the first two being climate change mitigation and climate change adaptation.</p> <p>– The Taxonomy Regulation RTS (which amends the SFDR RTS) will come into force in stages, with the first stage applying to the first two objectives (only) on 1 January 2022. The RTS as regards the other objectives will apply on/ from 1 January 2023 (see below).</p> <p>– The upshot is that, in our view, this row only applies from 1 July 2022 to:</p> <p>– Article 9 products that have an “environmentally sustainable objective” as per the Taxonomy Regulation PLUS the objective relates to climate change mitigation and/or climate change adaptation.¹³</p> <p>– Article 8 products that include sustainable investments with an environmental objective, where that objective relates to climate change mitigation and/or climate change adaptation.¹⁴</p> <p>What do I need to disclose if this applies to one of my products?</p> <p>Article 9 products – the additional disclosure comprises the following (to be disclosed as per the RTS and the template in Annex III of the RTS, as amended for the taxonomy):</p> <p>– information on the environmental objective/s under the Taxonomy Regulation to which the investment underlying the product contributes; and</p> <p>– a description of how and to what extent the investments underlying the product are in economic activities that qualify as “green” (ie environmentally sustainable) under Article 3 of the Taxonomy Regulation (ie complying with the four prescribed tests, including the technical screening criteria)</p> <p>In particular, this description must specify the proportion of investments in environmentally sustainable economic activities selected for the product, as a percentage of all investments selected for the financial product (including details on the proportions of enabling and transitional activities respectively)</p> <p>Article 8 products – the position is less clear, but subject to further regulatory guidance, our view:</p> <p>– comply with the disclosure requirements in the RTS and the Annex II template to the RTS as amended for the taxonomy.</p> <p>– BUT only to the extent the product invests in sustainable investments with an environmental objective, being climate change mitigation or climate change adaptation</p> <p>– essentially the same disclosure obligation then applies as for Article 9 products. The template in the RTS Annex II is very helpful in illustrating what precisely is required to be disclosed against, and how.</p> <p>PLUS for Article 8 products only:</p> <p>– Include prescribed new boilerplate statement: <i>“The “do no significant harm” principle applies only to those investments underlying the financial product that take into account the EU criteria for environmentally sustainable economic activities. The investments underlying the remaining portion of this financial product do not take into account the EU criteria for environmentally sustainable economic activities.”</i></p>				<p>Articles 8(2a) and 9(4a) SFDR, and RTS</p> <p>Articles 5, 6 and 25 Taxonomy Regulation plus RTS</p> <p>RTS template Annex II and III</p> <p>Article 2 Taxonomy RTS, relating to when it comes into force</p>

13_This is based on the following comment in the ESA consultation on the amendments to be made to the SFDR RTS for the taxonomy: *“The disclosures described above would be broadly applicable to Article 9 products. However, the existing SFDR RTS disclosures would continue to apply to Article 9 products pursuing social objectives, as the Taxonomy does not yet cover those objectives, and to Article 9 products pursuing environmental objectives that are not covered by the EU taxonomy. This is because according to Recital 19 TR, Article 9 products pursuing environmental objectives can have investments in economic activities that contribute to an environmental objective as defined under 2(17) SFDR referring to non-taxonomy compliant activities (as indicated by the words “among others” in that Recital).”* (paragraph 39, emphasis added).

14_Note the following from the same ESA consultation: *“The ESAs’ draft RTS provide for the content and presentation of additional information to the SFDR product disclosures where the product makes sustainable investments contributing to environmental objectives. This CP proposes a set of amending Articles for products making sustainable investments, more specifically investing in activities having environmental objectives in compliance with the TR. The amendments are particularly targeted at Article 9 SFDR products but are also relevant for Article 8 SFDR products that intend to make sustainable investments in environmental objectives in compliance with the TR”* (paragraph 10, emphasis added).

Time	Legislation	Requirement(s)	Pre-contractual disclosure	Website disclosure	Periodic reports	Legislative reference
Ongoing from 1 July 2022	SFDR	Entity level PAI disclosure: Begin to collect data for future PAI statements as regards the indicators referred to in the RTS template.		●		Article 4 SFDR and RTS
1 July 2022	SFDR and RTS	For your Article 8 and 9 products (if any) – pre-contractual disclosures: – Update pre-contractual disclosures in line with the RTS, including the prescribed templates. NB: For products making sustainable investments, the RTS requires disclosure on how the fund has relevantly and successfully complied with the “do not significantly harm” (DNSH) requirement, this being part of the test for when something is a sustainable investment. This draws on the indicators used in the PAI regime and the minimum safeguards under Article 18 of the Taxonomy Regulation.	●			Articles 8 and 9 SFDR RTS templates in Annex II and III
In periodic reports of relevant products issued from 1 July 2022 onwards	SFDR and RTS	For your Article 8 and 9 products (if any) – periodic reports: – Include prescribed new disclosures in periodic reports in line with the RTS: – For Article 8 products, as to the extent to which the relevant environmental (E) or social (S) characteristics are met. – For Article 9 products, as to: (a) the overall sustainability-related impact of the product by means of relevant sustainability indicators; or (b) where an index has been designated as a reference benchmark, a comparison between the overall sustainability-related impact of the product with the impacts of the designated index and of a broad market index through sustainability indicators. Essentially this requires transparency as to the success of the product in attaining its E/S characteristics or sustainable investment objective – Include a historical comparison covering up to 5 previous reference periods, and the top 15 investments made during a particular reference period – For products making sustainable investments, the RTS requires disclosure on how the product has relevantly and successfully complied with the DNSH (this being part of the test for when something is a sustainable investment). This draws on the indicators used in the PAI regime and the minimum safeguards under Article 18 of the Taxonomy Regulation – Use template in RTS Annex IV and V, and follow the RTS requirements NB: As noted above, periodic reports must comply with the prescribed requirements from (we assume) 1 January 2022 in compliance with SFDR Level 1, and from 1 July 2022 in compliance with the RTS (ie Level 2). This means that asset managers must draw up in 2022 respective periodic reports in compliance with the RTS, irrespective of reference periods. For the first report, asset managers should therefore compile information from 10 March 2021, and clarify the reference period the data covers.			●	Article 11 SFDR RTS template in Annex IV and V and Articles 36 to 42, and Article 51

Time	Legislation	Requirement(s)	Pre-contractual disclosure	Website disclosure	Periodic reports	Legislative reference
In periodic reports of relevant products issued from 1 July 2022 onwards	Taxonomy Regulation and RTS	<p>If you have an Article 9 product that invests in an economic activity that contributes to an environmental objective OR an Article 8 product that invests in sustainable investments with an environmental objective, AND the environmental objective/s is one or both of the following: (a) climate change mitigation (b) climate change adaptation</p> <ul style="list-style-type: none"> – Prepare periodic disclosures in line with the Taxonomy Regulation and RTS. – Scope is the same as for the pre-contractual disclosures – discussed above. – The disclosure is made as per a prescribed template, with a graph required, together with a narrative explanation of prescribed matters and a statement of compliance with the criteria in the Taxonomy Regulation that defines an “environmentally sustainable investment”. <p>PLUS for Article 8 products only:</p> <ul style="list-style-type: none"> – Include prescribed new boilerplate statement: “<i>The “do no significant harm” principle applies only to those investments underlying the financial product that take into account the EU criteria for environmentally sustainable economic activities. The investments underlying the remaining portion of this financial product do not take into account the EU criteria for environmentally sustainable economic activities.</i>” 			●	<p>Article 5 and 6 Taxonomy Regulation</p> <p>RTS template Annex IV and V</p> <p>Article 2 Taxonomy RTS, relating to when the Taxonomy amendments to the SFDR RTS come into force</p>
1 July 2022 ¹⁵	SFDR RTS	<p>Entity level PAI disclosure – For firms that consider principal adverse impacts, issue updated PAI disclosure that complies with SFDR RTS.</p> <ul style="list-style-type: none"> – Use the template in RTS Annex I, but leave blank any sections requiring disclosures for one or more reference periods. Under the RTS, a reference period is a calendar year – 1 Jan to 31 Dec (Article 1 RTS) – These sections only have to be completed in the firm’s report as at 30 June 2023, for the reference period – 1 Jan 2022 to 31 Dec 2022 (subject to the point flagged above re “Delay to RTS start date”) – Information that must be published in the first statement not related to reference periods includes the following sections in Table 1 of Annex I: “Summary”, “Description of policies to identify and prioritise adverse sustainability impacts”, “Engagement policies” and “References to international standards” 		●		<p>Article 4 SFDR RTS (including, for asset managers, the template in Annex I)</p>
1 July 2022	SFDR and RTS	<p>For your Article 8 and 9 products (if any) – website disclosures:</p> <ul style="list-style-type: none"> – Update website disclosures of product level information in relation to Article 8 and 9 products, so they comply with the SFDR RTS requirements. These requirements cover both where and how the disclosures must be made, and what must be disclosed – eg as regards the methodology, data sources used, screening criteria etc. – The RTS also requires a 2 page summary 		●		<p>Article 10(1)(d) SFDR</p> <p>SFDR RTS</p>
1 July 2022	SFDR	<p>For your Article 8 and 9 products (if any) – website disclosures:</p> <ul style="list-style-type: none"> – Add to website your new/updated pre-contractual and/or periodic disclosures as above 		●		Article 10(1)(d) SFDR
30 Dec 2022	SFDR	<p>Product level PAI disclosure</p> <p>For firms that consider principal adverse impacts in relation to products in scope of SFDR:</p> <ul style="list-style-type: none"> – Include in the pre-contractual disclosures for that product a clear and reasoned explanation of whether, and, if so, how the product considers the principal adverse impacts on sustainability factors and a statement that information on principal adverse impacts on sustainability factors is available in the information to be disclosed pursuant to Article 11(2) (periodic reports) – It is not strictly required for this to follow the RTS format for Article 4 disclosures, and we are assuming this is not required (although this may be the expectation of regulators in due course). If correct, this means that qualitative disclosures only are required – ie a narrative on relevant matters. And not quantitative disclosures – ie data 	●			Article 7(1) SFDR

¹⁵As per the European Commission letter dated 8 July 2021 announcing a delay to the RTS start date.

Time	Legislation	Requirement(s)	Pre-contractual disclosure	Website disclosure	Periodic reports	Legislative reference
In periodic reports issued after 30 Dec 2022	SFDR	Product level PAI disclosure: – Comply with the statement referred to above – ie begin to include information on principal adverse impacts on sustainability factors in the periodic reports for the product – It is not strictly required for this to follow the RTS format for Article 4 disclosures, and we are assuming this is not required (although it may be the expectation of regulators in due course). If this assumption is correct, it means that qualitative disclosures only are required – ie a narrative on relevant matters. And not quantitative disclosures – ie data			●	Article 7(1) SFDR
1 Jan 2023	Taxonomy Regulation and RTS	If you have an Article 9 product that invests in an economic activity that contributes to an environmental objective OR an Article 8 product that invests in sustainable investments with an environmental objective, AND the environmental objective/s is one of the following: ¹⁶ the sustainable use and protection of water and marine resources, the transition to a circular economy, pollution prevention and control, and the protection and restoration of biodiversity and ecosystems – Update pre-contractual disclosures to align with the requirements of the Taxonomy Regulation and RTS (as amended for the taxonomy), which begin to apply as of this date as regards the other environmental objectives in the regulation, namely: ¹⁷ – the sustainable use and protection of water and marine resources – the transition to a circular economy – pollution prevention and control, and – the protection and restoration of biodiversity and ecosystems – See above for what needs to be disclosed and how.	●			Article 5 and 6 Taxonomy Regulation RTS templates
1 Jan 2023	Taxonomy Regulation and RTS	– Update the periodic disclosures as above.			●	Article 5 and 6 Taxonomy Regulation and RTS (esp Annex IV and V)
1 Jan 2023	SFDR	For your Article 8 and 9 products (if any) – website disclosures: – Add to website your new/updated pre-contractual and/or periodic disclosures as above		●		Article 10(1)(c) and (d) SFDR
By 30 June 2023	SFDR and RTS	Entity level PAI disclosure – For firms that consider PAI: – Publish a PAI statement in accordance with the RTS, now including the information that refers to a reference period (in respect of the reference period relating to 2022)		●		Article 4 SFDR and RTS RTS Annex I
By 30 June 2024, 2025 etc	SFDR and RTS	Entity level PAI disclosure – Going forward, firms that consider PAI must publish annual PAI statements by 30 June each year which must include information on the most recent reference period (ie the previous calendar year) plus historical reference periods		●		Articles 8 and 9 SFDR and RTS ¹⁸

Notes: (1) All references to regulations are to SFDR Level 1 unless otherwise specified. (2) This assumes the draft SFDR RTS (as amended for the taxonomy) is adopted “as is” and comes into force on 1 July 2022, in line with current timing expectations. (3) This matrix is subject to regulatory guidance on a number of points which remain uncertain – in particular, how the statements in https://www.esma.europa.eu/sites/default/files/library/jc_2021_06_joint_esas_supervisory_statement_-_sfd.pdf should be viewed now the start date for the RTS has been pushed back by six months. In the interim, we have assumed all dates/positions remain the same unless otherwise stated.

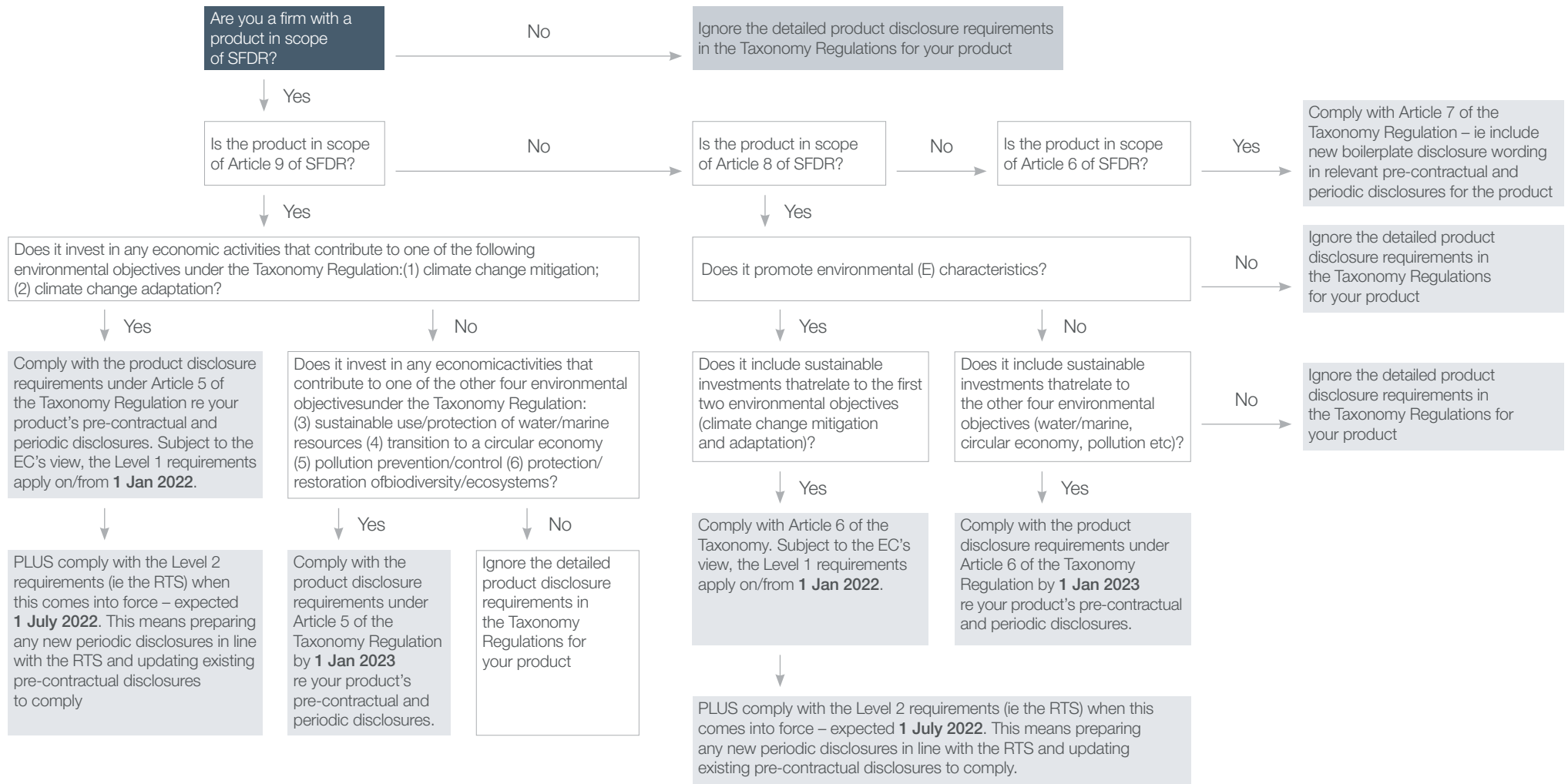
¹⁶ As noted above, the Taxonomy Regulation identifies six environmental objectives, with the first two being climate change mitigation and climate change adaptation. The others are the sustainable use and protection of water and marine resources, the transition to a circular economy, pollution prevention and control, and the protection and restoration of biodiversity and ecosystems. As noted above, the detailed taxonomy product disclosure requirements will come into force in stages, with the first stage applying to the first two objectives (only) on 1 January 2022 (Level 1) and 1 July 2022 (for the Level 2 requirements). The RTS as regards the other objectives will apply on/from 1 January 2023 – for both the pre-contractual and periodic disclosure requirements (Article 2 Taxonomy Regulation RTS).

¹⁷ See explanation above re TR RTS coming into force in stages.

¹⁸ See also https://www.esma.europa.eu/sites/default/files/library/jc_2021_06_joint_esas_supervisory_statement_-_sfd.pdf

Schedule 2

SFDR and Taxonomy Regulation application flowchart



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