

Answers to questions on the interpretation of Regulation (EU) 2019/2088, submitted by the European Supervisory Authorities on 9 September 2022

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Questions on the interpretation of Regulation (EU) 2019/2088 (SFDR)

Question 1 (FISMA/2926)

ESA	Joint Committee
Question ID	1/9.09.2022
Status	Submitted
Legal act	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 ('SFDR')
Topic	Clarification of SFDR definitions
Article	Article 2, point (17), SFDR
Paragraph	
Subparagraph	
COM Delegated or Implementing Acts/RTS/ITS/GLs	
Article/Paragraph	
Question	How does the definition of “sustainable investment” in Article 2, point (17) SFDR apply to investments in funding instruments that do not specify the use of proceeds, such as the general equity or debt of an investee company? For example, would an investment in an investee company which has one economic activity, among several other economic activities,

	that contributes to an environmental or social objective (and none of the economic activities significantly harm any environmental or social objective and the company follows good governance practices) be considered to be a “sustainable investment” as a whole or in part?
Answer	The definition of sustainable investment set out in Article 2, point (17), SFDR does not prescribe any specific approach to determine the contribution of an investment to environmental or social objectives. Financial market participants must disclose the methodology they have applied to carry out their assessment of sustainable investments, including how they have determined the contribution of the investments to environmental or social objectives, how investments do not cause significant harm to any environmental or social investment objective and how investee companies meet the ‘good governance practices’ requirement. This is reflected in Commission Delegated Regulation (EU) 2022/1288¹ which, for example, requires financial market participants to explain how the indicators for adverse impacts on sustainability factors have been taken into account when carrying out the ‘do no significant harm’ test of sustainable investments. The reference to ‘economic activities’ in the definition of sustainable investment set out in Article 2, point (17), SFDR seems to target cases in which funds are allocated to a specific project or activity, or to a company engaged in one single type of activity. However, financial market participants in scope of the SFDR can invest in funding instruments that do not specify the use of proceeds, such as the general equity or debt of an investee company. As an example, financial products referred to in Article 2, point (12) SFDR, such as UCITS and AIFs, can invest in the general equity or debt of an investee company. Moreover, pursuant to Article 9(3) SFDR, products tracking a Paris-aligned Benchmark (PAB) or a Climate Transition Benchmark (CTB), often based on portfolios of shares or bonds of companies, are deemed to make sustainable investments (see reply to question 5). In light of the above, the notion of sustainable investment can therefore also be measured at the level of a company and not only at the level of a specific activity.

Question 2 (FISMA/2927)

ESA	Joint Committee
Question ID	2/9.09.2022
Status	Submitted
Legal act	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 (SFDR)
Topic	Application of SFDR definitions
Article	Article 2, point (17), SFDR

¹ Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022 supplementing Regulation (EU) 2019/2088 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the content and presentation of the information in relation to the principle of ‘do no significant harm’, specifying the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports (OJ L 196, 25.7.2022, p. 1).

Paragraph	
Subparagraph	
COM Delegated or Implementing Acts/RTS/ITS/GLs	
Article/Paragraph	
Question	How should “investment in an economic activity that contributes to an environmental objective” or “investment in an economic activity that contributes to a social objective” in Article 2, point (17), SFDR be interpreted? Are any (or all) of the following features sufficient for an economic activity to meet the definition of Article 2, point (17) SFDR, i.e. to contribute to an environmental (or a social) objective? a) should the economic activity being carried out by the investee company in itself contribute to an environmental or social objective (for example, an issuer investing in micro-finance activities in the developing world to assist in the development of socially disadvantaged communities)?; and/or b) can any economic activity potentially contribute to an environmental or social objective simply because it is carried on in a sustainable manner by the investee company (examples: (1) an investee company manufacturing a product in a more environmentally sustainable way than its peers/the sector, or (2) an undertaking that stands out for its social impact, for instance through its HR management or the representation of women); and/or Can any economic activity contribute to the general environmental objective of climate change mitigation if it is only covered by a transition plan (for instance a plan aiming to reach climate-neutrality based on the ACT methodology)?
Answer	In order to qualify as ‘sustainable investment’ as defined in Article 2, point (17) SFDR, a financial product must (1) be invested in an economic activity that contributes to an environmental or social objective, (2) not significantly harm any of those objectives; and (3) ensure that the investee companies follow good governance practices, in particular with respect to sound management structures, employee relations, remuneration of staff and tax compliance. The SFDR does not set out minimum requirements that qualify concepts such as contribution, do no significant harm, or good governance, i.e. the key parameters of a ‘sustainable investment’. Financial market participants must carry out their own assessment for each investment and disclose their underlying assumptions. This policy choice gives financial market participants an increased responsibility towards the investment community and means that they should exercise caution when measuring the key parameters of a ‘sustainable investment’. Furthermore, investments considered as ‘sustainable investment’ under Article 2, point (17) SFDR shall not significantly harm any of the objectives referred to in that Article. Therefore, referring to a transition plan aiming to achieve that the whole investment does not significantly harm any environmental and social objectives in the future could for instance not be considered as sufficient.

Question 3 (FISMA/2928)

ESA	Joint Committee
Question ID	3/9.09.2022
Status	Submitted
Legal act	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 (SFDR)
Topic	SFDR and financial products that have a reduction in carbon emissions as their objective
Article	Article 9(3) SFDR
Paragraph	
Subparagraph	
COM Delegated or Implementing Acts/RTS/ITS/GLs	
Article/Paragraph	
Question	Article 9(3) SFDR, carbon emissions reductions and other benchmark questions: From Article 9(3) SFDR and the Commissions Q&A answer regarding that Article in July 2021 (which outlined the principle that SFDR is neutral in terms of product design), is it correct to consider that financial products that have an Article 9(3) objective of reduction in carbon emissions can be either products with a passive or active investment strategy? If financial products with an active investment strategy can be financial products that have reduction in carbon emissions as their objective under Article 9(3) SFDR, are there any specific requirements they should meet when they have designated an index as a reference benchmark?
Answer	The first subparagraph of Article 9, paragraph (3), is neutral in terms of product design. Financial products that have an objective of reduction in carbon emissions can therefore fall within the scope of Article 9(3) SFDR whether they use a passive or active investment strategy. The SFDR is a transparency regulation, it does not prescribe the use of Paris-Aligned Benchmarks ('PAB') or Climate Transition Benchmarks ('CTB') nor the use of any other specific type of index. Where no PAB/CTB is passively tracked, the SFDR requires a detailed explanation of how the continued effort of attaining the objective of reducing carbon emissions is ensured in view of achieving the long-term global warming objectives of the Paris Agreement. This is also reflected in Delegated Regulation (EU) 2022/1288 that requires financial market participants to clearly explain the extent to which a financial product complies with the methodological requirements set out in Commission Delegated Regulation (EU) 2020/1818².

² Commission Delegated Regulation (EU) 2020/1818 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards minimum standards for EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks (OJ L 406, 3.12.2020, p. 17).

Question 4 (FISMA/2929)

ESA	Joint Committee
Question ID	4/9.09.2022
Status	Submitted
Legal act	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 (SFDR)
Topic	SFDR and financial products that promote a reduction in carbon emissions
Article	Article 8 SFDR
Paragraph	
Subparagraph	
COM Delegated or Implementing Acts/RTS/ITS/GLs	
Article/Paragraph	
Question	Can a financial product “promote” carbon emissions reduction as an “environmental characteristic”, as opposed to having it as an “objective”? In other words, can a financial product disclose carbon emissions reduction as an environmental characteristic under Article 8 SFDR, or should any financial product which targets carbon emissions reduction as a feature always be considered to be having “carbon emissions reduction” as an “objective” and therefore be required to disclose the information required by Article 9(3) SFDR? In this example, if the financial product is considered an Article 8 SFDR product, what would be the criteria to differentiate it from an Article 9 SFDR product?
Answer	Article 8 of the SFDR does not limit the types of characteristics that can be promoted by financial products. The SFDR does not prevent a product from promoting carbon emissions reductions as part of its investment strategy if the product does not have sustainable investment as its objective. However, information disclosed in pre-contractual, website and periodic disclosures as regards the carbon emissions reduction characteristics of the product should not mislead investors into thinking that this aspect is part of the product's objective and therefore that the product has sustainable investment as its objective as per Article 9(3). Moreover, Article 13 SFDR requires that marketing communications do not contradict the content of disclosures made pursuant to the SFDR: this implies that marketing documents should not lead investors into believing that the product pursues sustainable investment, where the promotion of carbon emissions reductions is only a mere characteristic of the product's investment strategy.

Question 5 (FISMA/2930)

ESA	Joint Committee
Question ID	5/9.09.2022
Status	Submitted
Legal act	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 (SFDR)
Topic	SFDR and financial products that have a reduction in carbon emissions as their objective
Article	Article 9(3) SFDR
Paragraph	
Subparagraph	
COM Delegated or Implementing Acts/RTS/ITS/GLs	
Article/Paragraph	
Question	Can financial products with a passive investment strategy which designate as a reference benchmark either a Paris Aligned Benchmark or (from 1 January 2023) a Climate Transition Benchmark automatically be deemed to fulfil the conditions of Article 9(3) SFDR in conjunction with Article 2(17) SFDR? Likewise, can financial products with an active investment strategy focused on carbon emissions reduction be deemed to satisfy the conditions of Article 9(3) SFDR in conjunction with Article 2(17) SFDR where they apply the same requirements (regarding selection criteria, etc.) as those applied by PAB and CTB pursuant to the BMR framework and in particular Commission Delegated Regulation (EU) 2020/1818?
Answer	According to Article 9(3) SFDR, where a financial product has a reduction in carbon emissions as its objective, the information to be disclosed pursuant to Article 6(1) and (3) SFDR shall include the objective of low carbon emission exposure in view of achieving the long-term global warming objectives of the Paris Agreement. According to Article 9(3) second subparagraph, where no EU Climate Transition Benchmark or EU Paris-aligned Benchmark in accordance with Regulation (EU) 2016/1011 of the European Parliament and of the Council is available, the information referred to in Article 6 shall include a detailed explanation of how the continued effort of attaining the objective of reducing carbon emissions is ensured in view of achieving the long-term global warming objectives of the Paris Agreement. Accordingly, where financial products are passively tracking Paris Aligned Benchmarks (PABs) and Climate Transition Benchmarks (CTBs), it can be considered they do not fall under Article 9(3) second subparagraph. Consequently, financial market participants do not have to provide a detailed explanation of how the continued effort of attaining the objective of reducing carbon emissions is ensured in view of achieving the long-term global warming objectives of the Paris Agreement, as these products are deemed to have sustainable investments as defined in Article 2, point (17) SFDR as their objective. Financial market participants must explain why they consider that products focused on carbon emissions reduction that are actively managed, i.e. that

	do not strictly track a PAB or CTB, have sustainable investment as their objective.
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Question 6 (FISMA/2931)

ESA	Joint Committee
Question ID	6/9.09.2022
Status	Submitted
Legal act	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 (SFDR)
Topic	Principal Adverse Impacts (PAI) at financial product-level
Article	Article 7.1(a) SFDR
Paragraph	
Subparagraph	
COM Delegated or Implementing Acts/RTS/ITS/GLs	
Article/Paragraph	
Question	PAI consideration: What is the meaning of “consider” in Article 7(1), point (a), SFDR? Could “consideration” of principal adverse impacts by a financial product mean that a financial product only discloses the relevant principal adverse impacts of the investments, for example total greenhouse gas emissions, or does “consideration” require the disclosure of the action taken by the financial market participant to address the principal adverse impacts of the product’s investments, such as engagement with investee companies, and are there any minimum criteria for such actions?
Answer	Article 7(1), point (a) SFDR imposes a disclosure obligation on financial market participant for those financial products for which a financial market participant applies Article 4(1), point (a), Article 4(3) or Article 4(4)³. That disclosure obligation refers to how a financial product considers principal adverse impacts on sustainability factors. In that respect, recital 18 specifies that “where financial market participants, taking due account of their size, the nature and scale of their activities and the types of financial products they make available, consider principal adverse impacts, whether material or likely to be material, of investment decisions on sustainability factors, they should integrate in their processes, including in their due diligence processes, the procedures for considering the principal adverse

³ Article 7 SFDR.

Transparency of adverse sustainability impacts at financial product level

1. By 30 December 2022, for each financial product where a financial market participant applies point (a) of Article 4(1) or Article 4(3) or (4), the disclosures referred to in Article 6(3) shall include the following:

(a) a clear and reasoned explanation of whether, and, if so, how a financial product considers principal adverse impacts on sustainability factors;

(b) a statement that information on principal adverse impacts on sustainability factors is available in the information to be disclosed pursuant to Article 11(2).

Where information in Article 11(2) includes quantifications of principal adverse impacts on sustainability factors, that information may rely on the provisions of the regulatory technical standards adopted pursuant to Article 4(6) and (7).

2. Where a financial market participant applies point (b) of Article 4 (1), the disclosures referred to in Article 6(3) shall include for each financial product a statement that the financial market participant does not consider the adverse impacts of investment decisions on sustainability factors and the reasons therefor.

	impacts alongside the relevant financial risks and relevant sustainability risks. [...] Financial market participants should include on their websites information on those procedures and descriptions of the principal adverse impacts". Consequently, the description related to the adverse impacts shall include both a description of the adverse impacts and the procedures put in place to mitigate those impacts.
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Question 7 (FISMA/2932)

ESA	Joint Committee
Question ID	7/9.09.2022
Status	Submitted
Legal act	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 (SFDR)
Topic	500 employee Principal Adverse Impacts (PAI) threshold at entity-level
Article	Article 4(3) and (4) SFDR
Paragraph	
Subparagraph	
COM Delegated or Implementing Acts/RTS/ITS/GLs	
Article/Paragraph	
Question	500 employee principal adverse impact (PAI) threshold: For the purposes of Articles 4(3)-4(4) SFDR, should "the average number of 500 employees" be understood to include workers who are assigned to the financial market participant even though they are employed by a third party that invoices their services back to the financial market participant, e.g. interim workers or workers that are employed by other organisations within a group for instance as part of shared-service centres? Furthermore, can the exemption in Article 23(5) of the Directive 2013/34/EU of the European Parliament and of the Council ⁴ ('Accounting Directive'), which grants Member States the right to exempt parent companies that are themselves the subsidiary of a larger group from drawing up consolidated financial statements and a consolidated management report under that Directive, apply to a "parent undertakings of a large group" as referred to in Article 4(4) SFDR?
Answer	As a general rule, and unless specifically defined in an applicable Union legal act, the definition of who constitutes an employee is governed by national law. Since SFDR does not contain a definition of who constitutes an employee, it must therefore be determined by reference to the definition of employee set-out in the applicable national law. The exemption in Article 23 of the Accounting Directive has no bearing on the disclosure obligations set out in Article 4(4) SFDR. These disclosures

⁴ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

	must be published and maintained on the website of the financial market participant. They are not part of the latter's management report even when the financial market participant falls within the personal scope of the Accounting Directive.
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Question 8 (FISMA/2933)

ESA	Joint Committee
Question ID	8/9.09.2022
Status	Submitted
Legal act	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 (SFDR)
Topic	Periodic disclosure frequency for portfolio management services
Article	Article 11(2)(i) SFDR
Paragraph	
Subparagraph	
COM Delegated or Implementing Acts/RTS/ITS/GLs	
Article/Paragraph	
Question	Periodic disclosure frequency for portfolio management services: The frequency of periodic reports in case of portfolio management services is determined by Article 11(2), point (i) SFDR, which refers to Article 25(6) of Directive 2014/65/EU of the European Parliament and of the Council ⁵ . Article 60 of Commission Delegated Regulation (EU) 2017/565 ⁶ provides the details of the periodic reporting requirements for portfolio management services, including their frequency. Based on that text, this reporting should be provided quarterly, with certain exceptions. However, recital 21 of SFDR states that "...Those disclosures by means of periodic reports should be carried out annually". Considering all the above, should financial market participants in scope provide a quarterly (with exceptions according to Article 60 of Delegated Regulation (EU) 2017/565) periodic report based on the SFDR templates for portfolio management, or can the financial market participants use one of the quarterly reports to present a yearly report based on the SFDR templates for portfolio management?
Answer	The legal drafting of Article 11(2), points (h) and (i), SFDR combined with recital 21 of the SFDR, clearly indicates the intention of the co-legislators that only one annual report is required. Recital 21 of the SFDR clarifies this explicitly, stating that "Those disclosures by means of periodic reports should be carried out annually". Co-legislators refer in singular to one of the quarterly reports required by Article 25(6) of Directive 2014/65/EU and Article 60 of Delegated Regulation (EU) 2017/565, by requiring that the

⁵ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) (OJ L 173, 12.6.2014, p. 349).

⁶ Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 87, 31.3.2017, p. 1).

	periodic disclosures are included “for investment firms / credit institutions which provide portfolio management, in a periodic report as referred to in Article 25(6) of Directive 2014/65/EU”. Therefore, financial market participants would need to include these disclosures annually in every fourth report. The report to be included in the template for portfolio management services of the fourth quarterly report required by Article 25(6) of Directive 2014/65/EU and Article 60 of Delegated Regulation (EU) 2017/565 should be based on the periodic report templates of the SFDR Commission Delegated Regulation (EU) 2022/1288.
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