

27. Januar 2021

New ESG disclosure obligations from March 10, 2021

From March 10, 2021, the main parts of the European Sustainable Finance Disclosure Regulation ((EU) 2019/2088 – **SFDR**) will apply. The SFDR will establish, among other things, comprehensive transparency obligations for AIFMs and financial advisers regarding certain sustainability aspects.

EXECUTIVE SUMMARY

- Going forward, information on various sustainability criteria must be published both on the website and in marketing documents. These obligations will apply as of March 10, 2021 already.
- The obligations apply in particular to all AIFMs and investment advisers in the so-called advisory models. Basic information must be provided, regardless of whether sustainability criteria play a role in investment decisions and recommendations. Advertising in marketing is also not a requirement.
- In addition, extended disclosure requirements apply to funds that promote environmental or social characteristics or even have sustainable investments or a reduction in carbon emissions as their objective. The specific ESG objectives or ESG characteristics, the methods used to achieve them and (if necessary, at a later date) also the results must be disclosed.

A. General disclosure requirements under the SFDR

The SFDR applies to all AIFMs, without distinguishing between merely registered AIFMs and those with a full scope license. Disclosures have to be made on the website as well as in pre-contractual disclosures and, for certain funds, in the periodic reports.

All AIFMs must publish information on their strategies for the incorporation of sustainability risks into their investment decision-making processes on their website and keep it up to date.

In addition, they must state on the website whether they take into account any adverse effects on sustainability factors in their investment decisions. According to the SFDR, sustainability

factors mean environmental, social and employee matters, respect for human rights, anti-corruption and anti-bribery matters. Therefore, in principle, they must make statements in respect of their due diligence guidelines with regard to such impacts.

Indications for the specific scope of the disclosures may be found in Art. 4 to 13 of the draft recommendations of the European Supervisory Authorities (ESAs) for detailed requirements for these disclosure obligations (regulatory technical standards - RTS). However, it is important to note that this draft was practically withdrawn due to considerable criticism from market participants. On the one hand, this is positive, as the scope would have led to considerable additional compliance work, especially for smaller AIFMs. On the other hand, this also means that the concretizations intended in the SFDR by way of a Level II Regulation are missing. However, it must be assumed that the Level II Regulation will enter into effect in the course of this year in an amended or completely new version. At present, therefore, there are, however, no indications as to whether and, if so, which of the individual proposals will be included in a new draft or the final Level II Regulation.

Alternatively, however, if AIFMs do not consider such impacts, they must at least explain why they do not and if and when they intend to consider such impacts.

Finally, AIFMs shall also include in their remuneration policies information on how those are consistent with the integration of sustainability risks and publish that information on their websites.

In the pre-contractual disclosures (i.e. especially in the PPM), the AIFMs must include descriptions of how sustainability risks are integrated into their investment decisions. The likely impacts of sustainability risks on the fund's return have to be assessed and the results have to be included in the pre-contractual disclosures. Alternatively, an AIFM may also choose to explain why it does not deem sustainability risks to be relevant.

From December 30, 2022 on at the latest, AIFMs that consider the principal adverse impacts of investment decisions on sustainability factors must further explain whether and, if so, how they do so with respect to the specific fund. Again, there is an option to explain why such impacts are not (yet) being considered.

The SFDR also applies to all "financial advisers" as defined in the SFDR, which may also include those market participants who, as investment advisers, merely advise "their" fund, which is managed by an external AIFM. According to Art. 2 (11) d) SFDR, these market participants are deemed to be investment firms if they are licensed to provide investment advice and advise an AIFM in this capacity. In this case, the company-related obligations under Art. 3 and 4 SFDR apply to them.

B. Additional disclosure requirements for funds with ESG characteristics under the SFDR and (from 2022) the Taxonomy Regulation

I. When do additional sustainability aspects have to be published?

In addition to the general disclosure requirements, there are further transparency requirements if funds either promote environmental or social characteristics (Art. 8 SFDR) or they even have sustainable investments or a reduction in carbon emissions as their objective (Art. 9 SFDR).

AIFMs will thus have to make a strategic decision on how to deal with such sustainability aspects with regard to their funds, as the scope of disclosure requirements now and in the future will depend on this.

Unfortunately, it is currently still unclear when it has to be assumed that a fund promotes environmental or social characteristics under Art. 8 SFDR. In the aforementioned draft RTS for the SFDR, the European Supervisory Authorities (ESAs) proposed in recital 21 that this should already be the case when AIFMs refer to sustainability factors in marketing communications or in the fund's mandatory investor information, which are considered in investment decisions. The draft was ultimately withdrawn due to the scope or level of detail of the proposed disclosure requirements, so unfortunately the Level II Regulation does not yet exist.

Possibly the European Commission will comment on this in the near future, as the ESAs have addressed this and other [questions](#) to the European Commission this month. In case of doubt, however, it should be assumed that the threshold for the qualification of a fund as a financial product within the meaning of Art. 8 SFDR is rather low.

II. Scope of the additional information

Providers of funds with ESG characteristics must therefore consider the following:

- With regard to these funds, the environmental and social characteristics or the respective sustainable investment objective shall be described on the AIFMs' websites.
- Furthermore, information must be provided on the methodologies used to assess, measure, and monitor these characteristics or objectives (including information on the data sources, the screening criteria for the underlying assets and the relevant sustainability indicators used to measure them).
- Finally, both the website and the pre-contractual disclosures and periodic reports must state how the advertised characteristics are (to be) met or the objectives are (to be) attained.

Indications for the specific scope of the disclosures may be found in Art. 14 to 32 of the draft RTS, however, the statement made before with respect to the significance of the draft applies here as well.

Equally important for the qualification of a fund as a financial product within the meaning of Art. 8 or 9 SFDR is probably the related applicability of the information obligations under Art. 5 and 6 of the [Taxonomy Regulation](#). Because as of January 1, 2022, funds that either aim to contribute to an environmental objective (Art. 9 SFDR) or that promote environmental characteristics (Art. 8 SFDR) will be subject to further disclosure requirements under the Taxonomy Regulation. In principle, these funds have to indicate to which environmental objectives the respective fund contributes and (what might be even more difficult to implement) to which extent the fund invests in sustainable economic activity in terms of the Taxonomy Regulation. The question remains open of how this obligation is to be implemented for Art. 8 SFDR funds that have not defined any concrete intentions to contribute to an environmental objective.

Hence, at the latest for all upcoming fundraisings, the strategic question arises as to how to deal with the integration of sustainability aspects with regard to the fund and its marketing. But

also for existing funds, the information must be published at least on the website and, if necessary, in the periodic reports. This issue is of particular importance, as it not only affects the implementation of the SFDR, which is now pending, but also has a direct impact on the future obligations under the Taxonomy Regulation.

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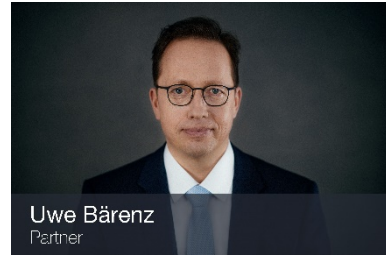
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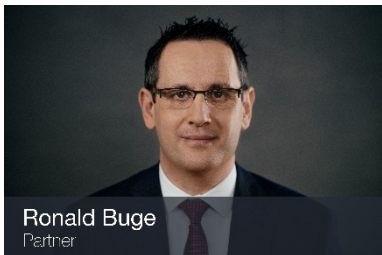
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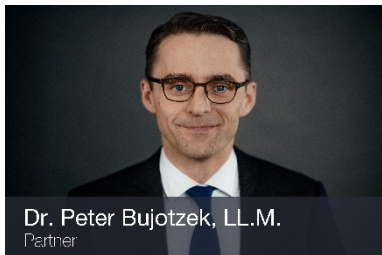
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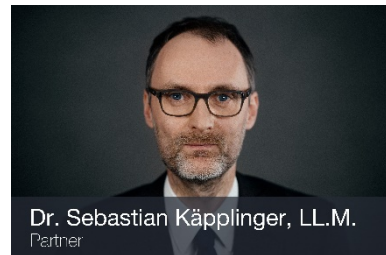
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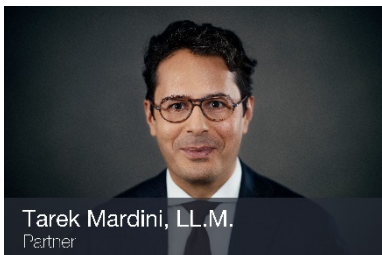
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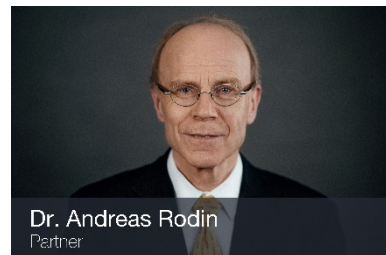
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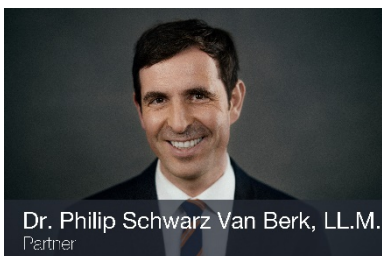
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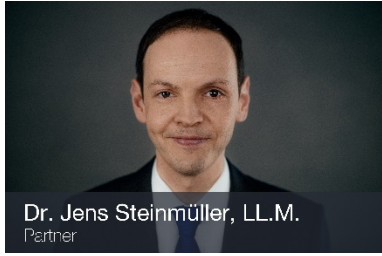
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