

ASSET MANAGEMENT  
& INVESTMENT FUNDS

## European Commission responses to SFDR/Taxonomy queries

The European Commission (EC) provided answers to a number of questions in relation to the applicability of the Sustainable Finance Disclosure Regulation (SFDR) and the Taxonomy Regulation (TR). We highlight in this publication some of the key points for Irish fund management companies and investment funds.

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### European Commission response to SFDR/ Taxonomy queries from the European Supervisory Authorities

The European Supervisory Authorities (ESAs) submitted a number of questions to the EC in December 2021, which were published on 13 May 2022, in relation to the applicability of the SFDR and the TR. While these questions covered a range of topics in relation to SFDR, we have highlighted below some of the key points for Irish fund management companies and investment funds.

- The EC clarified that financial market participants (FMPs) that are below threshold for the consideration of adverse impacts of investment decisions on sustainability factors could still publish principle adverse impacts (PAI) at product level for a certain subset of financial products (Products). Notwithstanding that they do not consider these at an entity level.
- The response also clarified that Products that were no longer made available to new investors at the date of the application of SFDR on 10 March 2021, were still subject to the requirements of SFDR. In particular where those Products produce periodic reports, as no specific transition regime was provided for under SFDR.
- The EC clarified that where an Article 8 or Article 9 Product invested in companies which did not follow good governance practices, they would be in breach of SFDR. Furthermore, the response stated that the good governance practices requirement would not prevent a Product which invested only in government bonds from being considered an Article 8 Product and went further to confirm that an Article 8 Product would not need to apply the requirements related to good governance practices in respect of government bonds.
- The EC also noted that neither SFDR nor TR obliged FMPs to make available Products referred to in Article 5 or 6 of TR or Article 8 or 9 of SFDR to invest in economic activities that qualify as environmentally sustainable under TR. In this context the EC also clarified in relation to data use, that FMPs may only disclose information for the purposes of disclosures under Article 5 and 6 of TR for which they have “reliable data”, otherwise they would risk infringing the requirements of SFDR and TR inter alia. The EC went on to note that disclosures provided under the Sustainability Disclosures Regulation (Commission Delegated Regulation (EU) 2021/2178), in annual financial statements, management reports or information in non-financial statements in accordance with Directive 2013/34/EU, is not a pre-requisite information source for



the quantitative disclosure requirement under TR.

- The EC also noted that where an FMP fails to collect data on the environmental objectives and on how and to what extent the investments underlying the Product are in economic activities that qualify as environmentally sustainable under TR, the pre-contractual and periodic product related disclosures must indicate 0%. It is worth noting this response contradicts the Central Bank of Ireland's recent guidance and so it remains to be seen how this aspect will be implemented in respect of Irish investment funds.
- The EC went on to note that should FMPs use "narrative explanations on lack of reliable data", such narratives

risk contradicting the purpose of TR and any such clarifications should not leave room for ambiguity about the alignment of the investments of the Product with TR. Nor should they include negative justifications, such as explaining a lack of the alignment by a lack of data.

- The EC finished the response by noting that where an Article 8 Product promotes environmental characteristics, it follows from Article 6 of TR, that the Product must disclose the information in accordance with that Article. The EC stated that it is irrelevant if a Product commits to investing in economic activities that contribute to an environmental objective within the meaning of SFDR and so an

Article 8 Product must include in its pre-contractual disclosures, whether investments will be in economic activities that contribute to an environmental objective, in accordance with Article 6 if that is the case. They went on to say that the same applies in respect of periodic disclosures.

- The EC made the same point in relation to Products under Article 9 which pursue a social objective in that the same obligation applies where that Product invests in economic activities contributing to an environmental objective.

### How we can help

Contact any member of the [Asset Management & Investment Funds team](#) to help you plan the next steps for compliance with SFDR and TR obligations.



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