

ASSET MANAGEMENT &  
INVESTMENT FUNDS

## EU sustainability-related disclosures - *delayed until 1 July 2022 | EC replies to SFDR questions*

1 July 2022 is the new date for implementation of the next phase of sustainability-related disclosure requirements under the Sustainable Finance Disclosures Regulation (SFDR).

This is a 6-month deferral from 1 January 2022. Affected disclosures include template pre-contractual and financial statement disclosures and environmental-related disclosure requirements under the EU Taxonomy for so-called light-green and dark-green products and a detailed principal adverse impact statement.

5 MIN READ



EU sustainability-related disclosures  
- delayed until 1 July 2022 | EC replies to SFDR questions

The European Commission (EC) published answers to questions raised on SFDR dealing with topics including

- Classification of Article 8 and Article 9 products
- Comply-and-explain mechanism and 500 employee threshold for PAI statement
- Applicability to non-EU AIFMs and registered AIFMs

The disclosure requirements apply to financial market participants, financial advisers and financial products. This note focuses on relevance for Irish authorised investment funds and fund managers. You can read earlier briefings by ALG’s Asset Management & Investment Funds team on Sustainable Finance and ESG [here](#).

Revised SFDR timeline

The EC published a letter dated 8 July 2021 confirming that because of the length and technical detail of the regulatory technical standards (RTS) under SFDR, the 1 January 2022 implementation date of the next phase of SFDR disclosure requirements will be deferred to 1 July 2022. The first phase of the SFDR disclosure requirements required under the EU Taxonomy due on 1 January 2022 will be bundled into this update and also deferred to 1 July 2022.

This is a welcome reprieve for UCITS, AIFs and their management companies, providing time to understand the disclosure requirements and apply them authentically and accurately. The deferral will also give time to consolidate the regulatory technical standard requirements into a single rulebook which should simplify tracking the various requirements through SFDR and the Taxonomy Regulation and further assist application of, and compliance with, the rules.



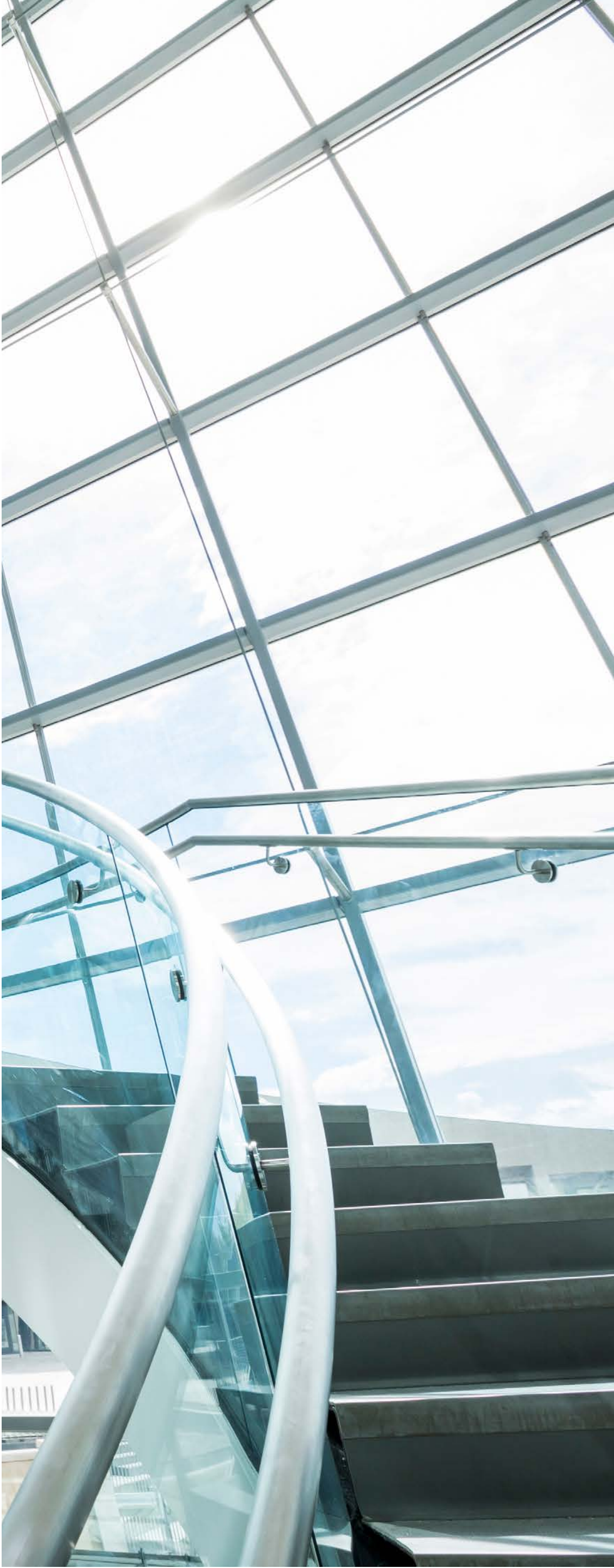
Here is an outline of the affected disclosure requirements deferred to 1 July 2022.

|          | Disclosure requirement  | Level 1 RTS ref. |
|----------|---|------------------|
| SFDR     | Climate and environment-related sustainability indicators for PAI statement   | 4(6)             |
|          | Social and employee matters sustainability indicators for PAI statement   | 4(7)             |
|          | Detailed pre-contractual disclosure for light-green products  | 8(3)             |
|          | Detailed pre-contractual disclosure for dark-green products   | 9(5)             |
|          | Detailed website disclosure for light-green and dark-green products   | 10(2)            |
| TAXONOMY | Detailed financial statement disclosure for light-green and dark-green products   | 11(4)            |
|          | Detailed disclosure on “do not significantly harm” principle referred to in SFDR definition of sustainable investment   | 2a(3)            |
|          | For light-green products promoting environmental characteristics; detailed pre-contractual disclosure on alignment with Taxonomy environmental objectives (x2 RTS)  | 8(4)             |
|          | For dark-green products with environmental objective; detailed pre-contractual disclosure on alignment with Taxonomy environmental objectives (x2 RTS)  | 9(6)             |
|          | For light-green products promoting environmental characteristics and dark-green products with environmental objective; detailed financial statement disclosure on alignment with Taxonomy environmental objectives (x2 RTS) | 11(5)            |

EC Q&A

The EC responded in July 2021 in the form of a [Q&A](#) to questions on SFDR topics raised in January 2021 by the European Supervisory Authorities (ESA). Below is a summary of the responses to the questions posed in the ESA’s letter.

| Topic   | Question   | Answer  |
|---|--|---|
| Registered AIFMs  | Does SFDR apply to registered AIFMs?   | Yes; both entity and product related disclosures apply.   |
| Non-EU AIFMs  | Does SFDR apply to non-EU AIFMs?   | Yes; both entity and product related disclosures apply including where a non-EU AIFM enters an EU member state market by way of NPPR.   |
| PAI statement: comply or explain mechanism commentary                       | n/a  | Complying with producing a PAI statement involves the consideration of <i>principal</i> adverse impacts. Non-compliance involves explaining why an entity does not consider adverse impacts.  |
| PAI statement: parent undertaking of a large group - 500 employee threshold | Must the 500 employee threshold for the parent undertaking be applied to EU and non-EU entities of the group?                      | The calculation of headcount takes into account the employees of the parent and subsidiaries regardless of whether they are inside or outside the EU.   |
| PAI statement: parent undertaking of a large group - PAI statement scope    | Does the PAI statement apply only to parent or at group consolidated level?  | <p>The PAI statement should be adapted to the specific situation of the parent undertaking and not to the group as a whole. Specific subsidiaries might themselves qualify as financial market participants.</p> <p>Where the financial market participant is a large entity, the 500 employee threshold is calculated by reference to that entity.</p> |
| Article 9: sustainable investments  | Must a dark-green product only invest in sustainable investments as defined in SFDR or is a minimum share of investments required? | <p>It can invest in investments and techniques for hedging or liquidity purposes. They must be in line with the sustainable investment objective and comply with the no significant harm principle.</p> <p>Where a product has an environmental objective and does not meet the no significant harm criteria, it is an A8 product.</p>                  |





| Topic  | Question   | Answer  |
|--|--|---|
| <b>Article 9: carbon emission reduction objective and benchmark tracking</b> | To be a dark-green fund with reduction in carbon emissions as its objective ( <b>an A9(3) product</b> ), must it passively track an EU Climate Transition Benchmark ( <b>CTB</b> ) or EU Paris-aligned benchmark ( <b>PAB</b> )? | Where an EU CTB or EU PAB exists, a financial product must track those.   |
| <b>Article 9: sustainable investment index components</b>                    | If yes to both above questions, and if the minimum standards of an EU PAB or EU CTB do not require the index components to be sustainable investments; can the product still be an A 9(3) product?                               | Minimum standards for the construction of EU PABs and EU CTBs must ensure compliance with the principle in 2(17) of SFDR which encompasses a harmonized definition of sustainable investment and principle of do no significant harm.           |
| <b>Article 8: product names</b>  | If a product has words like sustainable, sustainability or ESG in its name can it qualify as a light-green or dark-green product?  | It can; it should also comply with the specific disclosure requirements of A8 or A9 respectively which are designed to address issues relevant to product classification including potential greenwashing.                                      |
| <b>Article 8: sustainability factor and risk reference</b>                   | Would a reference to taking into account a sustainability factor or sustainability risk in the investment decision be sufficient for A8 to apply?  | Integration of sustainability risks, as defined in SFDR, alone is not enough for A8 to apply.   |
| <b>Article 8: automatic classification</b>                                   | If yes to the above, is there any way a product that discloses under SFDR A6(1) or 7(1) is not automatically considered A8?  | Yes.  |
| <b>Article 8: minimum investment threshold</b>                               | Is there a minimum investment threshold to achieve A8 designation?   | No.   |
| <b>Article 8: sectoral exclusion</b>   | Would a not-advertised sectoral exclusion (e.g. tobacco) qualify as promotion?   | No, unless it is promoted in some way. See below for the EC discussion on the meaning of promotion.   |
| <b>Article 8: legal obligation ban</b>                                       | Would compliance with a national legal obligation such as a ban on investment in cluster munitions bring a product in scope of A8?   | Yes, if compliance with the ban is promoted in the investment policy. See below for the EC discussion on the meaning of promotion.  |
| <b>Investment firms: tailored financial products</b>                         | Do the disclosure requirements apply at the level of the portfolio or at the level of the standardized portfolio solutions?  | The level of the portfolio. Website disclosures should comply with data protection law and ensure client confidentiality. Transparency of standardized product solutions might be a way for complying with the website disclosure requirements. |





### Meaning of “promotion”

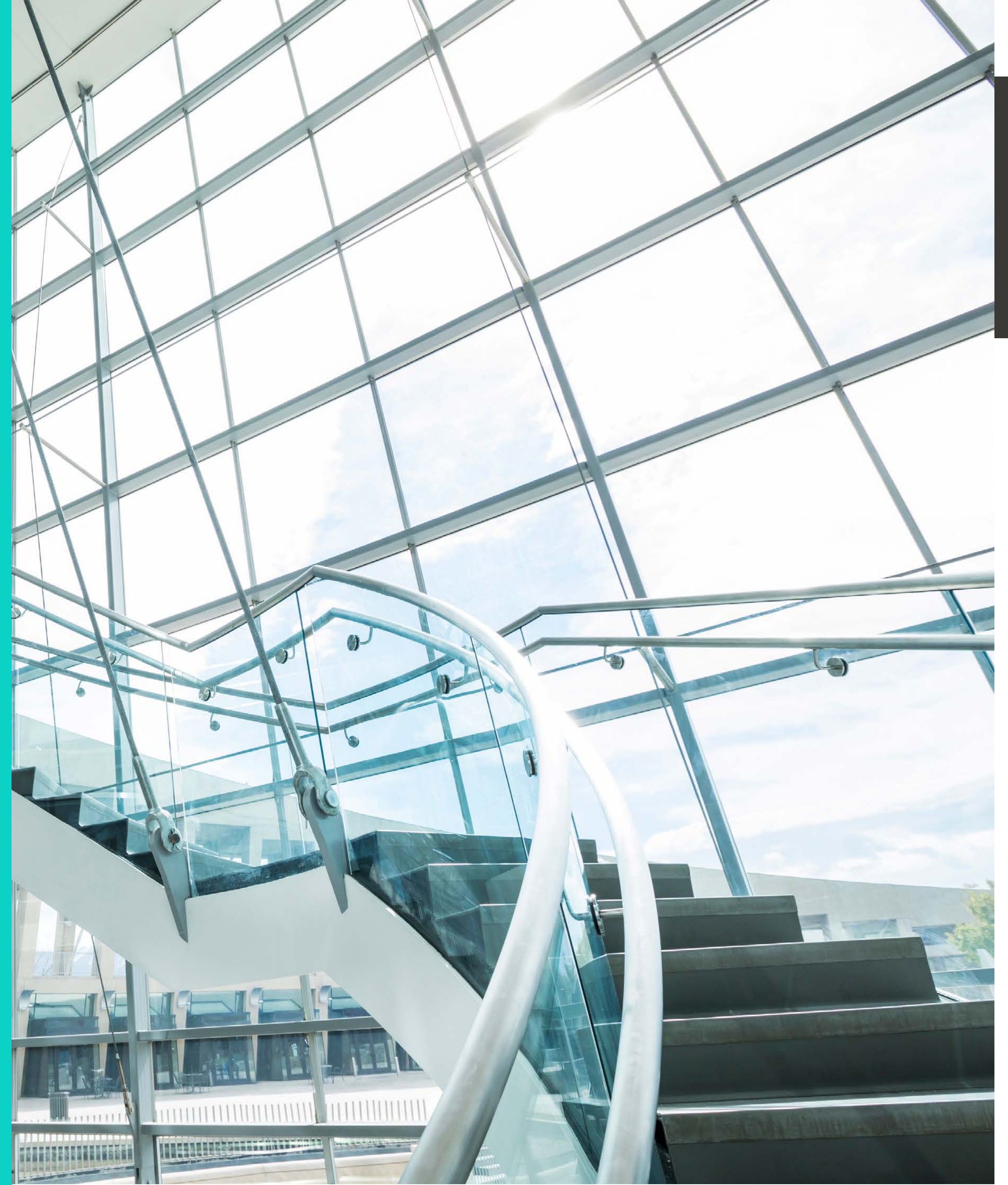
The EC’s letter provides clarification on the meaning of promotion for an A8 product. It states:

*“The term ‘promotion’ within the meaning of Article 8 SFDR encompasses, by way of example, direct or indirect claims, information, reporting, disclosures as well as an impression that investments pursued by the given financial product also consider environmental or social characteristics in terms of investment policies, goals, targets or objectives or a general ambition in, but not limited to, pre-contractual and periodic documents or marketing communications, advertisements, product categorisation, description of investment strategies or asset allocation, information on the adherence to sustainability-related financial product standards and labels, use of product names or designations, memoranda or issuing documents, factsheets, specifications about conditions for automatic enrolment or compliance with sectoral exclusions or statutory requirements regardless of the form used, such as on paper, durable media, by means of websites, or electronic data rooms”.*

### Next steps

We await the final full complement of RTS under SFDR to complete the sustainability-related disclosure analysis for UCITS, AIFs and their management companies. The EC’s renewed strategy for sustainable finance released in July 2021 stated that it will look further at A8 categorisation and we will stay tuned for updates on that.

In the meantime, we recommend that planning should continue for the next phase of SFDR compliance for UCITS management companies, AIFMs and their funds. We can also help to advise on implications of the clarifications in the EC SFDR Q&A. You can contact the A&L Goodbody Asset Management & Investment Funds team for advice and assistance.





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EC Q&A on sustainability-related  
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