

## The green finance regulation (ESG criteria + Climate Change + taxonomy)

- 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.**
- Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 **on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088. (The so-called green taxonomy regulation).**

### 1. Presentation

The Climate Action Agreement obtained in Paris during the COP 21 was probably the starting point to convince and/or help the European Commission to work on a Climate Action Regulation in order to be adopted by the European Parliament and the Council as soon as possible. This was done in 2019 with the publication of the (EU) Regulation 2019/2088.

A COP is a major international **Conference on the climate gathering** all Member States involved since 1992 by the **United Nation's Framework Convention on Climate change** (UNFCCC). COP means "Conference of parties", the "parties" being signatories to the Convention (195 countries + the European Union). The objective is to make an assessment and an update on the implementation of the Convention and to negotiate new commitments. In 2011, Member States committed to find a new international agreement in 2015 to mitigate climate action below 2°C. This was the **objective of the COP21**. On 12 December 2015, the COP21 ended with a first agreement which forecasts to **limit the increase in global temperature to below 2 and possibly to move towards an objective of 1.5** compared to the preindustrial era. On 4 November 2016, just one year after COP21, **Paris Agreement came into force** because the double threshold required was reached (sign-off by 55 countries covering at least 55% of greenhouse gas emissions) thanks to the ratification of countries the most producers like Canada, China, USA and India. It was a historical agreement for the international negotiations on climate.

**On 11 December 2019, the European Commission adopted its Communication on a European Green Deal**, which significantly increases the EU's climate action and environmental policy ambitions.

#### **What is sustainable investment?**

Sustainable investment is an approach to investing that aims to incorporate environmental, social and governance (**ESG**) factors into investment decisions, to better manage risk and generate sustainable, long-term returns. Examples of ESG criteria:

- ✓ **Specific environmental:** green cars and finance.
- ✓ **General social:** health and safety, working conditions and non-discriminations, local communities and human rights.
- ✓ **Specific social:** access to medicines, product safety and responsible marketing (pharmacy, chemistry, banking and financial services)

**The six objectives** included in the EU Regulation are:

1. Climate change mitigation
2. Climate change adaptation
3. Sustainable use and protection of water and marine resources
4. Transition to a circular economy, including waste prevention and recycling
5. Pollution prevention and control
6. And prevention and restoration of biodiversity and ecosystems

Asset managers need to take into account the sustainability risk when investing in financial instruments and other assets and define a renewed sustainable strategy. Product manufacturers will also be concerned when selling financial products to investors. UCITS and AIFM Directives are amending accordingly as well as MiFID in order to include this sustainability risk.

Since 10<sup>th</sup> March 2021, any financial product (including UCITS and AIF) have to disclose in the each pre-contractual document (fund prospectus) their classification as per SFDR. Green (art. 9) lightly green (art.8) or not green at all (art.6).

As set out in the Taxonomy Regulation as well as in the TEG report published 9 March 2020, on financing a sustainable European economy, the European Commission is working to establish a **Platform on Sustainable Finance** to provide technical assistance and recommendations on technical screening criteria, most notably for extending the Taxonomy to environmental **objectives 3-6**.

The Taxonomy Regulation sets out three groups of Taxonomy users:

- 1. Financial market participants** offering **financial products** in the EU, including occupational pension providers;
- 2. Large companies** who are already required to provide a non-financial statement under the Non-Financial Reporting Directive; and
- 3. The EU and Member States**, when setting public measures, standards or labels for green financial products or green (corporate) bonds.

Finally, the Taxonomy sets performance thresholds (referred to as '**technical screening criteria**') for economic activities which:

- ✓ Make a substantive contribution to one of the six environmental objectives: climate change mitigation, adaptation, water, circular economy, pollution and ecosystems;
- ✓ Do no significant harm (**DNSH**) to the other five, where relevant;
- ✓ Meet minimum safeguards (e.g., OECD Guidelines on Multinational Enterprises and the United Nations Guiding Principles on Business and Human Rights).

The ESAs have published a new final version of these RTS on 22 October 2021 (after the version of 2 February 2021). This new, normally final version of SFDR's RTS has been concatenated in a report including the RTS of the Taxonomy Regulation. The European Commission should validate them at the end of December 2021 to be effective 3 months after their publication in the



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Official Journal of the EU. The Commission intends to incorporate all the SFDR RTS, those of February 2021 and the RTS of the Taxonomy of October 2021, in a single document. RTS should oblige asset managers and product manufacturers to provide this SFDR Reporting detailing KPIs (sustainability indicators), PAIs, and analysis and ESG data with four templates to be completed. It is not impossible that new entry into force of SFDR RTS be postponed from July 2022 to January 2023. This is due to lack of clarity and absence of standardization regarding ESG factors methodologies and definition of sustainability.



## 2. Chronology of events

1)	At the end of 2018 and beginning of 2019, the EC launched a number of consultations to assess the possibility for asset managers to include ESG factors in their investments/strategies in connection with MiFID II, UCITS and AIFMD (funds and financial trading operations) looking for a technical advice. One of the 3 consultations aimed at guidelines for rating agencies.
2)	<b>9 December 2019:</b> Publication of the Regulation (EU) 2019/2088 as well as the Regulation (EU) 2019/2089 modifying EU regulation 2016/1011. Amendments of EU text 2016/1011 refer to EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks.
3)	<b>11 December 2019: the EU adopted its Communication on a European Green Deal.</b>
4)	<b>9 March 2020:</b> The Technical Expert Group (TEG) on financing a sustainable European economy published its final report
5)	<b>13 March 2020:</b> The AMF published a first policy on investor information on how asset managers could inform investors properly and prevent the greenwashing risk.
6)	<b>April 2020:</b> During COVID 19 the EC published a CP on THE RENEWED SUSTAINABLE FINANCE STRATEGY. Replies were expected until 15 July 2020.
7)	<b>8 June 2020:</b> The EC published proposals for integration of sustainability risks and factors in UCITS, AIFMD and MIFID II (draft delegated acts).
8)	<b>22 June 2020:</b> Publication of the Regulation (EU) 2020/852.
9)	<b>2 Feb 2021: The ESAs published RTS of SFDR.</b> Applicable date should be January 2022 with a possible delay <b>July 2021, The EC responds to the ESAs and postpones the application RTS to July 2022.</b>
10)	<b>22 Oct 2021: ESAs published a new final version of RTS for SFDR in a Report including the RTS of the framework regulation (the taxonomy regulation (EU) 2020/852 of 18 June 2020. The EC has to endorse them before entering into force.</b>

## 3. Reference text(s) and date of entry into force



- Text of the **Regulation (EU) 2019/2088** has been published in the Official of the EU on **9 December 2019**. This regulation shall apply from **10 March 2021**.
- Text has of the **Regulation (EU) 2020/852** has been published in the Official of the EU on **22 June 2020**. This regulation shall apply as from **1 January 2022** and **1 January 2023**.

### Link(s):

- <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R2088&from=EN>
- <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R0852&from=EN>



**CONTACT SGSS/CAO/REG:** Jean-Pierre Gomez ([Jean-Pierre.Gomez@sgss.socgen.com](mailto:Jean-Pierre.Gomez@sgss.socgen.com))  
And/or Marie-Claire de St Exupéry ([marie-claire.de-saint-exupery@sgss.socgen.com](mailto:marie-claire.de-saint-exupery@sgss.socgen.com))