



MAPLES
GROUP

EU Sustainable Finance Disclosure Regulation

What, When & How for March 2021

3 November 2020

Opening Address

- Welcome, thanks to Moderator and acknowledgement of the Keynote
- Introduction of Speakers
 - Peter Stapleton, Head of Funds & Investment Management, Maples Group
 - Eimear O'Dwyer, Partner, Funds & Investment Management, Maples Group
- The Sustainable Financial Disclosures Regulation (**SFDR**)
 - What?
 - When?
 - How?
- Masterclass Materials and Additional Resources www.maples.com/esg

The EU Sustainable Action Plan and Green Deal

The Climate Challenge and Finance

- The EU has committed to becoming the world's first climate neutral continent by 2050
- However, that poses challenges for Member States:

*“To meet our Paris targets, Europe needs between €175 and €290 billion in additional yearly investment in the next decades. We want a quarter of the EU budget to contribute to climate action as of 2021. Yet, public money will not be enough. This is why the EU has proposed hard law to incentivise private capital to flow to green projects. We hope that Europe's leadership will inspire others to walk next to us. We are at two minutes to midnight. It is our last chance to join forces.”***Valdis Dombrovskis**

- To incentivise, and where necessary, compel financial market participants (**FMPs**) to make private capital available – the EC set out a series of action points on sustainable finance (the "**Sustainable Action Plan**")

The Original Action Plan

The Action Plan 2018 stretches across the whole investment chain

1	Taxonomy ✓	Develop an EU classification system for environmentally sustainable economic activities	6	Sustainability in research and ratings	Explore how credit rating agencies could more explicitly integrate sustainability in to their assessments. Study on sustainability ratings and research and exploring possible measures to encourage their uptake.
2	Standards and labels	Develop EU standards (such as EU Green Bond Standard) and labels for sustainable financial products (via Ecolabel) to protect integrity and trust of sustainable finance market	7	Disclosures by financial market participants ✓	Enhance transparency to end-investors on how financial market participants consider sustainability
3	Fostering investment in sustainable projects	Exploring measures to improve the efficiency and impact of instruments aiming at investment support. Mapping on investment gaps and financing.	8	Sustainability in prudential requirements	Explore the feasibility of reflecting sustainability in prudential rules (where justified from a risk perspective)
4	Incorporating sustainability in financial advice ✓	Amend MiFID II and IDD delegated acts to ensure that sustainability preferences are taken into account in the suitability assessment.	9	Strengthening sustainability disclosures by corporates	Enhance climate and sustainability-related information provided by corporations
5	Developing sustainability benchmarks ✓	Develop climate benchmarks and ESG disclosures for benchmarks	10	Fostering sustainable corporate governance & promoting long-termism	Collect evidence of undue short-term pressures from capital markets on corporations and consider steps for promoting corporate governance that is more conducive to sustainable investments.

The Regulatory Framework

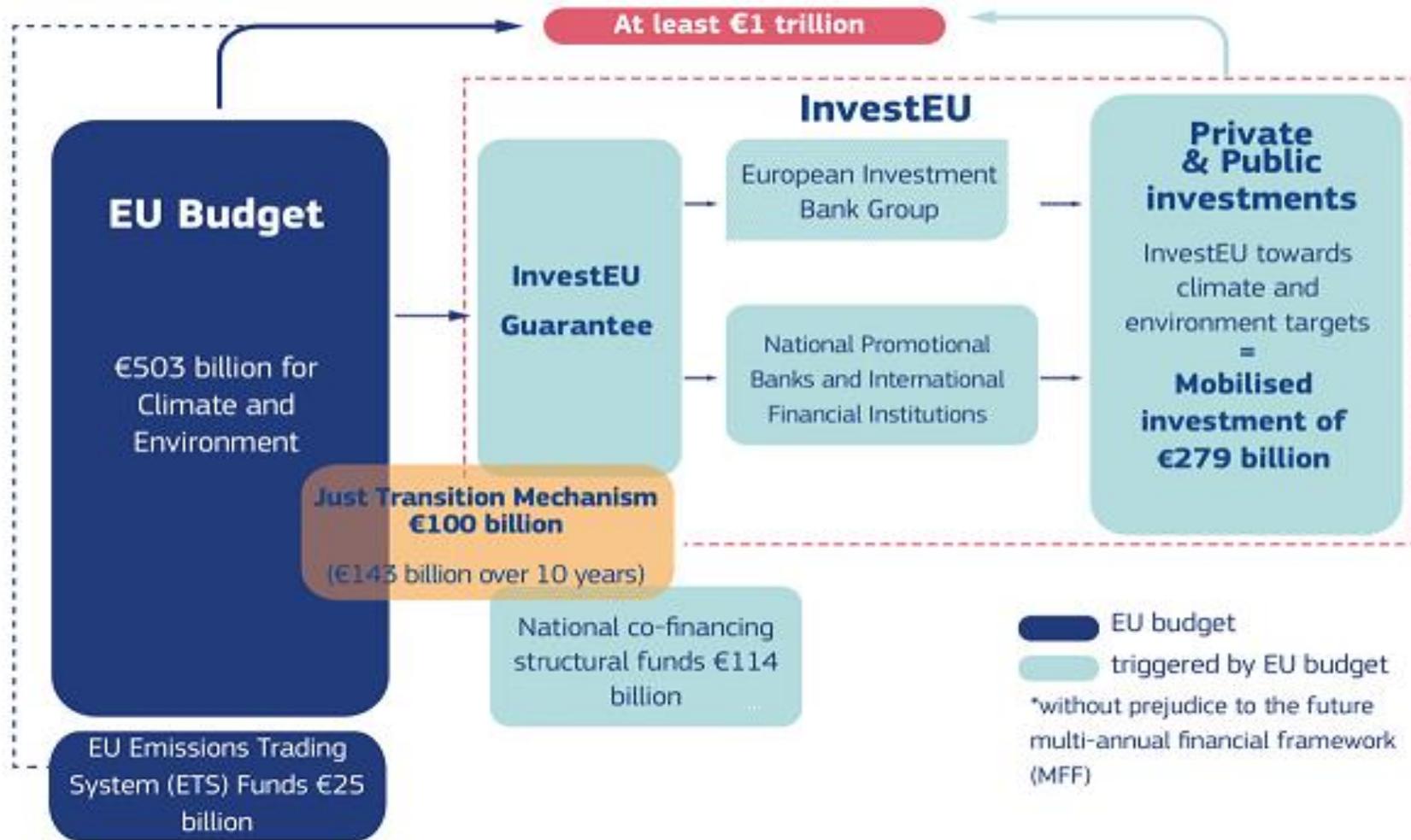
- These action points have progressed and have now become regulations or advanced legislative proposals:

Taxonomy Regulation	A unified classification system for sustainable activities
SFDR	Consistent disclosure requirements in relation to sustainability
Benchmarks Regulation	Standardised sustainability benchmarks for green products
MiFID and IDD	Including sustainability considerations in financial advice
UCITS AND AIFMD	Integrating sustainability risks and factors into UCITS and AIFMD
Corporate non-Financial Disclosure	Strengthening ESG data reporting and accounting rule-making
Green Bonds	A common green bond standard to increase comparability and transparency
EU Ecolabel	Common EU Ecolabel for sustainable products, including financial products
Corporate Governance	Fostering sustainable corporate governance and collecting evidence of undue short-term pressure from capital markets
CRR/Solvency II	Incorporating sustainability into prudential requirements
Credit Ratings	Integrating sustainability in ratings and market research

The Green Deal

- On 11 December 2019, the Commission presented the European Green Deal, a growth strategy adding detail on how Europe can become the first climate neutral continent by 2050
- As part of the Green Deal, the Commission presented on 14 January 2020 the European green deal investment plan, which will mobilise at least €1 trillion of sustainable investments over the next decade. It will enable a framework to facilitate public and private investments needed for the transition to a climate-neutral, green, competitive and inclusive economy

Where will the Money come from?

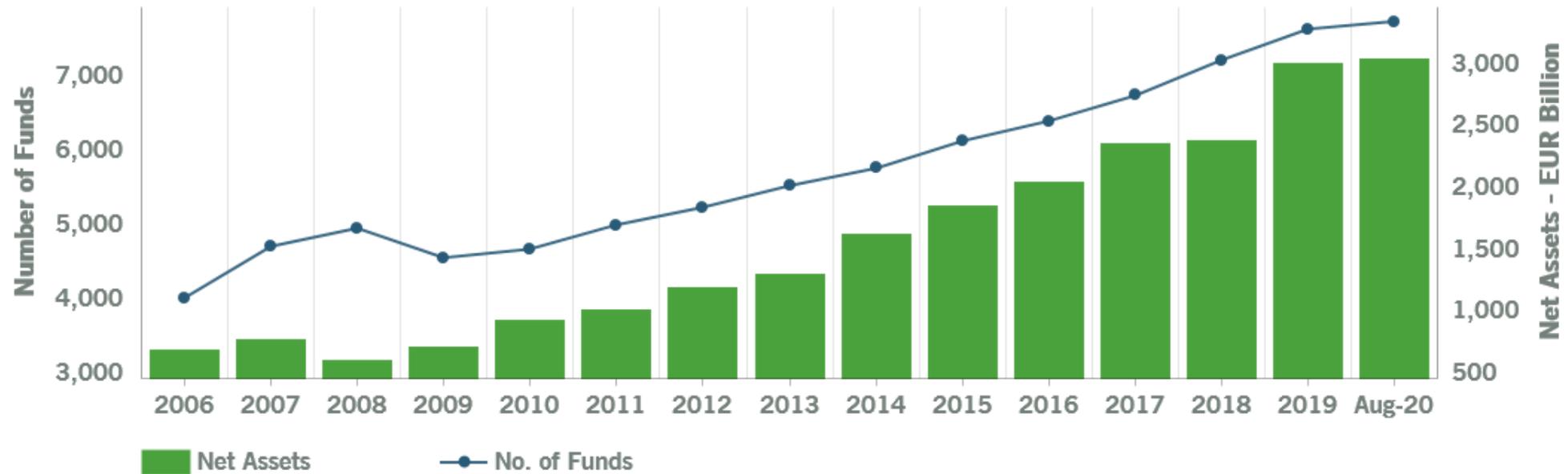


Source: EU Commission

Note: *The numbers shown here are net of any overlaps between climate, environmental and Just Transition Mechanism objectives.

Irish Domiciled Funds & the Opportunity

Irish Domiciled Funds, Total Net Assets & No. of Funds



Source: Irish Funds

The Sustainable Finance Disclosures Regulation

Background to Sustainable Finance

- The EU is strongly supporting the transition to a low-carbon, more resource-efficient and sustainable economy and has been at the forefront of efforts to build a financial system that supports sustainable growth
- “Sustainable finance” generally refers to the process of taking due account of **environmental, social and governance** (ESG) considerations when making investment decisions, leading to increased investment in longer-term and sustainable activities

Environmental

Environmental considerations refer to climate change mitigation and adaptation, as well as the environment more broadly and the related risks (e.g. natural disasters).

Social

Social considerations may refer to issues of inequality, inclusiveness, labour relations, investment in human capital and communities.

Governance

The governance of public and private institutions, including management structures, employee relations and executive remuneration, plays a fundamental role in ensuring the inclusion of social and environmental considerations in the decision-making process.

Sustainable Finance Disclosure Regulation

9.12.2019

EN

Official Journal of the European Union

L 317/1

I

(Legislative acts)

REGULATIONS

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) On 25 September 2015, the UN General Assembly adopted a new global sustainable development framework: the 2030 Agenda for Sustainable Development (the '2030 Agenda'), which has at its core the Sustainable Development Goals (SDGs). The Commission Communication of 22 November 2016 on the next steps for a sustainable European future links the SDGs to the Union policy framework to ensure that all Union actions and policy initiatives, both within the Union and globally, take the SDGs on board at the outset. In its conclusions of 20 June 2017, the Council confirmed the commitment of the Union and its Member States to the implementation of the 2030 Agenda in a full, coherent, comprehensive, integrated and effective manner, and in close cooperation with partners and other stakeholders.
- (2) The transition to a low-carbon, more sustainable, resource-efficient and circular economy in line with the SDGs is key to ensuring long-term competitiveness of the economy of the Union. The Paris Agreement adopted under the United Nations Framework Convention on Climate Change (the 'Paris Agreement'), which was approved by the Union on 5 October 2016 ⁽³⁾ and which entered into force on 4 November 2016, seeks to strengthen the response to climate change by, inter alia, making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.
- (3) In order to reach the objectives of the Paris Agreement and significantly reduce the risks and impacts of climate change, the global target is to hold the increase in the global average temperature to well below 2 °C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1,5 °C above pre-industrial levels.

⁽¹⁾ OJ C 62, 15.2.2019, p. 97.

⁽²⁾ Position of the European Parliament of 18 April 2019 (not yet published in the Official Journal) and decision of the Council of 8 November 2019.

⁽³⁾ Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (OJ L 282, 19.10.2016, p. 1).

- Disclosures to enable investors make **informed choices**
- Harmonised rules on **transparency**
- Integration of **sustainability risks**
- Principal adverse **sustainability impact**

The Scope of SFDR

Who is in Scope?

Financial Market Participants:	<ul style="list-style-type: none">• an insurance undertaking which makes available an insurance-based investment product (IBIP)• an investment firm which provides portfolio management• an institution for occupational retirement provision (IORP)• a manufacturer of a pension product• an alternative investment fund manager (AIFM)• a pan-European personal pension product (PEPP) provider• a manager of a qualifying venture capital fund• a manager of a qualifying social entrepreneurship fund• a management company of an undertaking for collective investment in transferable securities (UCITS management company)• a credit institution which provides portfolio management
Financial Product:	<ul style="list-style-type: none">• a segregated portfolio• an alternative investment fund (AIF)• an IBIP• a pension product• a pension scheme• a UCITS• a PEPP

- It is very important to note that separate and independent obligations apply to both:
 - the FMP and
 - the FP
- This will mean approvals for the Manager but also the Board of Funds

Disclosure Obligations per Fund Type

- There are disclosure obligations applicable to **all fund types**
- Also enhanced disclosure obligations for “ESG-Focused Funds”

ESG-Focussed Funds	
ESG-labelled investment funds	Investment funds which promote environmental or social characteristics
Sustainable investment funds	Investment funds with a sustainable investment objective
Carbon reduction investment funds	Investment funds that aim to reduce carbon emissions

Taxonomy Regulation

- Harmonised classification system for economic activities that qualify as environmentally sustainable for investment purposes
- Applies to all financial products regardless of whether they are marketed as “green” or not
- In order to be considered an “environmentally sustainable investment” a fund must:
 1. Invest in economic activities that contribute substantially to one or more of 6 environmental objectives
 2. Do no significant harm to any of the 6 environmental objectives
 3. Comply with minimum human rights / social safeguards and
 4. Comply with minimum technical screening criteria

Environmental Objectives

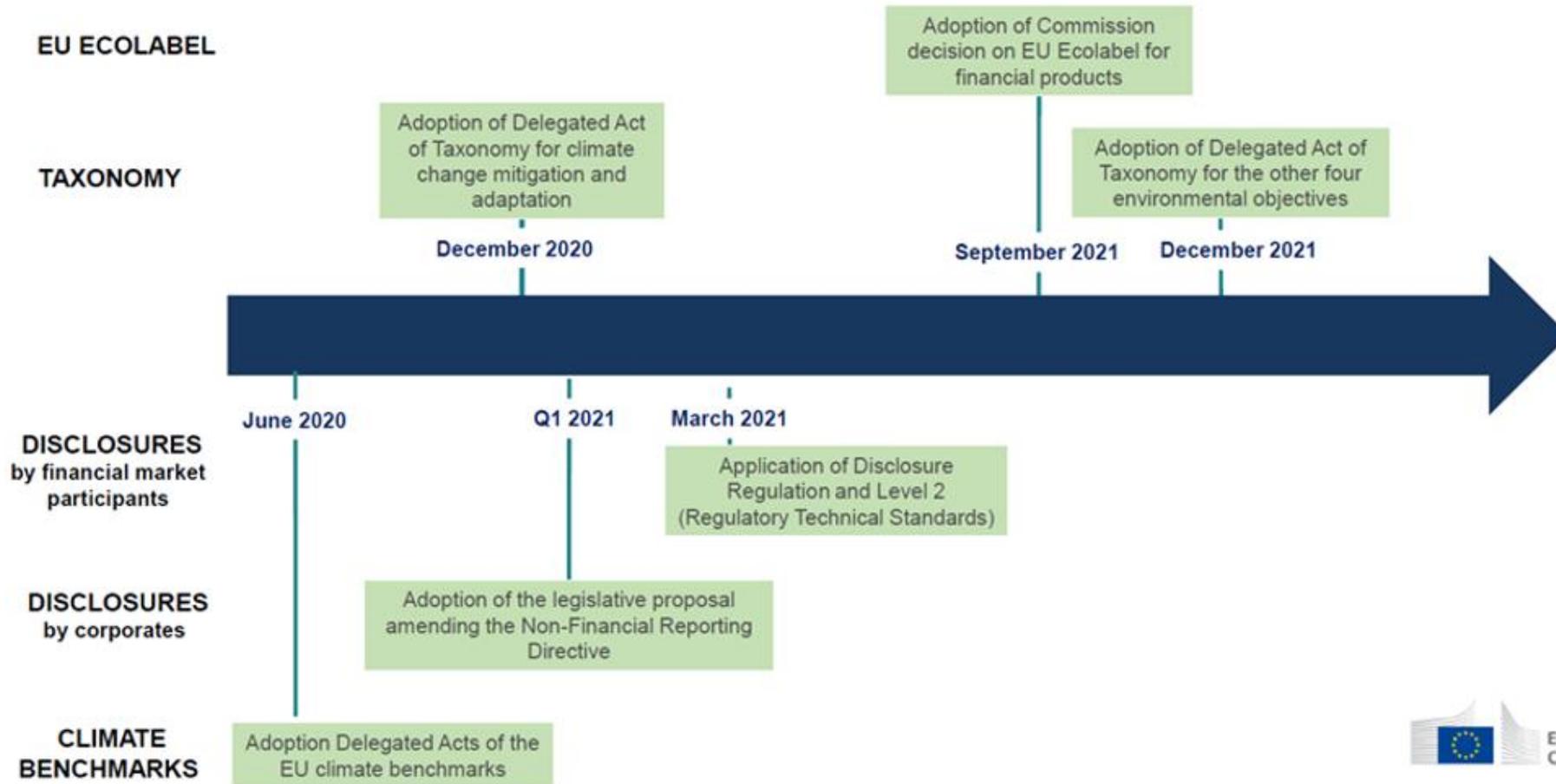
1		CLIMATE CHANGE MITIGATION
2		CLIMATE CHANGE ADAPTATION
3		SUSTAINABLE USE OF WATER AND MARINE RESOURCES
4		CIRCULAR ECONOMY
5		POLLUTION PREVENTION
6		HEALTHY ECOSYSTEM

Disclosures for Taxonomy Aligned Sustainable Investments

- **For each relevant product**, the FMP will be required to state:
 - **How and to what extent** they have used the Taxonomy in determining the sustainability of the underlying investments
 - **To what environmental objective(s)** the investments contribute
 - **The proportion of underlying investments** that are Taxonomy-aligned, expressed as a percentage of the financial product. This disclosure should include details on the respective proportions of **enabling and transition** activities, as defined under the Taxonomy Regulation
 - The disclosures must be made as part of existing **pre-contractual and periodic reporting** requirements. These products also carry sustainability disclosure obligations under SFDR

The Timeline and Next Steps

This Was The Proposed Timeline ...



Update from the European Commission

- Letter from the European Commission dated 20 October 2020 to EBA, EIOPA and ESMA
- These bodies were charged with developing draft regulatory technical standards (RTS) by 30 December 2020 in advance of SFDR coming into force on 10 March 2021
- Letter acknowledges that the unprecedented economic and market stress caused by Covid-19 necessitated an extension of the deadline for public consultation on the draft RTS
- However, it also states that *“in terms of substance, the application of the Regulation is not conditional on the formal adoption and entry into force or application of the regulatory technical standards as it lays down at Level 1 general principles of sustainability-related disclosures in three distinct areas.”*

Update from the European Commission

- **Integration of sustainability risks in the investment decision-making process**, FMPs must, in accordance with the applicable sectoral legislation, already consider sustainability risks in their internal processes
- **SFDR requires transparency**, with no further details necessary in the RTS. As regards FPs that qualify under Articles 8 and 9 of SFDR, in accordance with applicable sectoral legislation, product manufacturers must already describe in the product documentation how the levels of sustainability are achieved. This means that the **manufacturers must comply with the disclosure principles set out in Articles 8 and 9** of SFDR
- **Transparency of adverse sustainability impacts**, numerous financial market participants currently comply with the non-financial reporting requirements under Directive 2013/34/EU or adhere to international standards and might consider using that information. Even without the full RTS, there are no impediments to financial market participants and financial advisers complying with the Level 1 requirements laid down in SFDR
- What does this mean for FMPs and FPs?

What needs to be done by March 2021?

SFDR Level 1 Provision	Applicable as at 10 March 2021	Scope of SFDR requirement
Article 3 – Transparency of sustainable risk policies WEBSITE		Financial market participants shall publish information on policies on the integration of sustainability risks in the investment decision-making process.
Article 4 – principal adverse sustainability impact ("PASI") statement WEBSITE		Where principal adverse impacts of investment decisions are considered a financial market participant shall inter alia, publish on its website; (i) description of the principal adverse sustainability impacts (ii) a statement on its due diligence policies in relation to PASI and (iii) a brief summary of engagement policies. Compliance is on a "comply or explain" basis.
Article 5 - Remuneration Policies: the integration of sustainability risks WEBSITE		The remuneration policies of the financial market participant must contain information on how the remuneration policies are consistent with the integration of sustainability risks.
Article 10 - Transparency on websites WEBSITE		Financial market participants shall publish and maintain on their websites the following information;- <ol style="list-style-type: none"> 1. A list of each Article 8 Fund together with the information referenced above in respect of that Article 8 Fund; 2. A list of each Article 9 Fund together with the information referenced above in respect of that Article 9 Fund; 3. information on the methodologies used to assess, measure and monitor the E or S characteristics or the impact of the sustainable investments selected for the financial product, including its data sources, screening criteria for the underlying assets and the relevant sustainability indicators used to measure the E or S characteristics or the overall sustainable impact of the financial product; The information should be disclosed so as to be clear, succinct and understandable to investors in a prominent easily accessible area of the website.

What needs to be done by March 2021?

SFDR Level 1 Provision	Applicable as at 10 March 2021	Scope of SFDR requirement
<p>Article 6 – The integration of sustainability risks in pre-contractual disclosures</p> <p>PROSPECTUS</p>		<p>Description of the manner in which sustainability risks are integrated in investment decisions in respect of financial market participants.</p> <p>Assessment of likely impact on the returns of the financial products.</p> <p>Compliance is on a "comply or explain" basis.</p>
<p>Article 8 - Funds which promote E & S characteristics ("Article 8 Fund")</p> <p>PROSPECTUS</p>		<p>For Article 8 Funds, the financial market participant must disclose information consistent with:</p> <p>How the environmental (E) or social (S) characteristics are met;</p> <p>If an index is used, information on whether the index used is consistent with the E or S characteristics; and</p> <p>Inclusion of disclosure consistent with Article 6 above.</p>
<p>Article 9 – Funds with sustainable objective ("Article 9 Fund")</p> <p>PROSPECTUS</p>		<p>For Article 9 Funds, the financial market participant/financial adviser must disclose information consistent with:</p> <p>Where an index has been designated as a reference benchmark (a) how that designated index is aligned to the objective; and (b) an why the designated index aligned with that objective differs from a broad market index.</p> <p>Where no index has been designated as a reference benchmark an explanation on how the sustainable investment objective is to be obtained.</p> <p>For an Article 9 Fund with a reduction in carbon emissions as its objective the financial market participant/financial adviser must include information how low carbon emission exposure in view of achieving the long- term global warming objectives of the Paris Agreement.</p> <p>Where relevant, disclosure should include where the index calculation methodology is found.</p>

What needs to be done by March 2021?

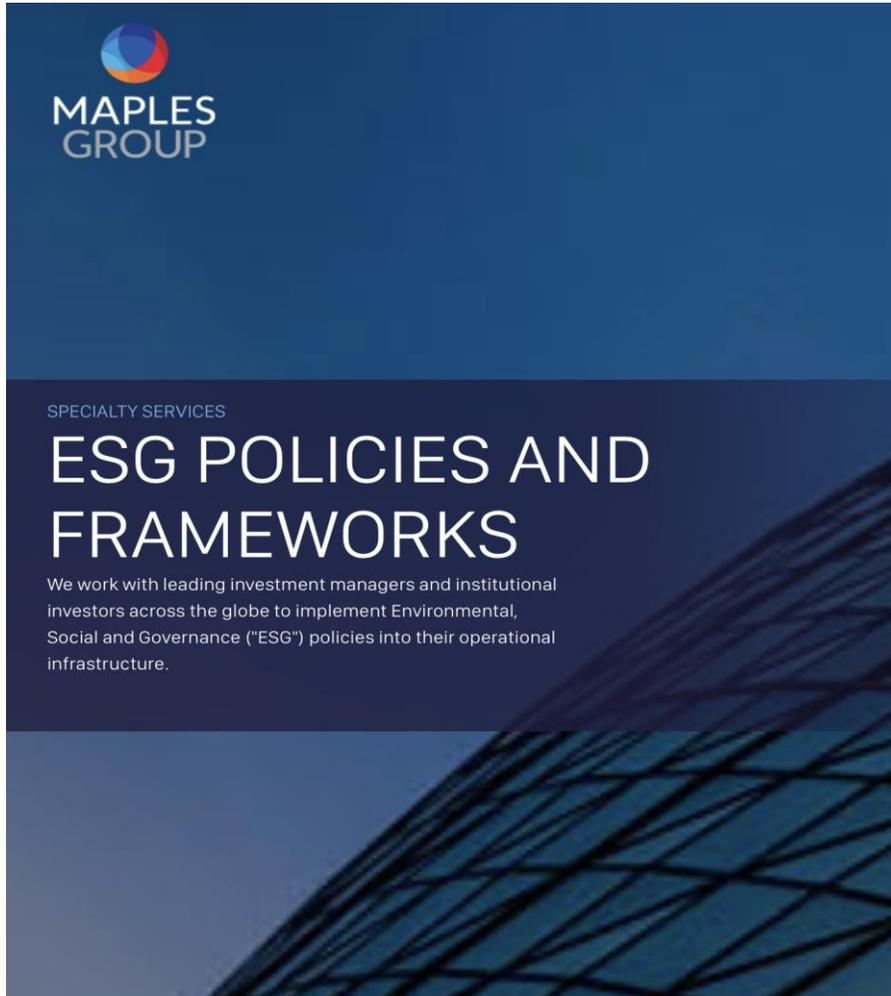
SFDR Level 1 Provision	Applicable as at 10 March 2021	Scope of SFDR requirement
Article 7 – Disclosure of the PASI at financial product level		Article 7 does not apply until 30 December 2022 – i.e. the first full year of application of SFDR.
Article 11 – Transparency in Periodic Reports		Obligations in 11(1) - 11(3) will not apply until 1 January 2022 , being the first full year after the implementation of the SFDR.
Article 12 - Review of disclosures		Obligation to keep the website disclosures required by Article 3, Article 5 and Article 10 up to date.
Article 13 - Marketing communications		Imposing obligations on financial market participants and financial advisers to ensure that their marketing materials do not contradict the information disclosed pursuant to SFDR.

- In practice the delay of the regulatory technical standards may require in scope firms to adopt a two step compliance. Further detail on the two step phased approach for Compliance is available in our recent industry update [Sustainable Financial Disclosures: Key Deadlines for Global Investment Managers](#)

How will AIFMD, UCITS and MiFID be impacted by the Sustainable Finance Framework?

- Organisational structures
- Identification of conflicts of interest
- Due diligence when investing under AIFMD and UCITS
- Suitability assessment and product governance under MiFID

How we are helping SFDR Compliance



- FMP Policies and Procedures
- FP Policies and Frameworks
- Disclosures in Pre-Contractual Documents
- Board Considerations
- Central Bank of Ireland Approvals
- Global Approvals and Registrations – GRS
- Other Workstreams
- www.maples.com/esg

Sample Client Checklists

- Investment Managers managing or distributing financial products in the EU

Policies

- Draft or update your internal policy describing how sustainability risks are considered in the investment process.
- Amend the internal UCITS, AIFMD or other remuneration policy to ensure consistency with the consideration of sustainability risks

Products

- Identify specific products being marketed by your organisation according to key criteria

Products

- Website

Products

- Prospectus or Offering Document

Products

- Other Issues

Governments, Regulators & Industry



An Roinn Airgeadais
Department of Finance



Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem



European Securities and
Markets Authority



Alternative Investment
Management Association



Contact Details and Q&A



Peter Stapleton
Head of Funds & Investment
Management
+353 1 619 2024
peter.stapleton@maples.com

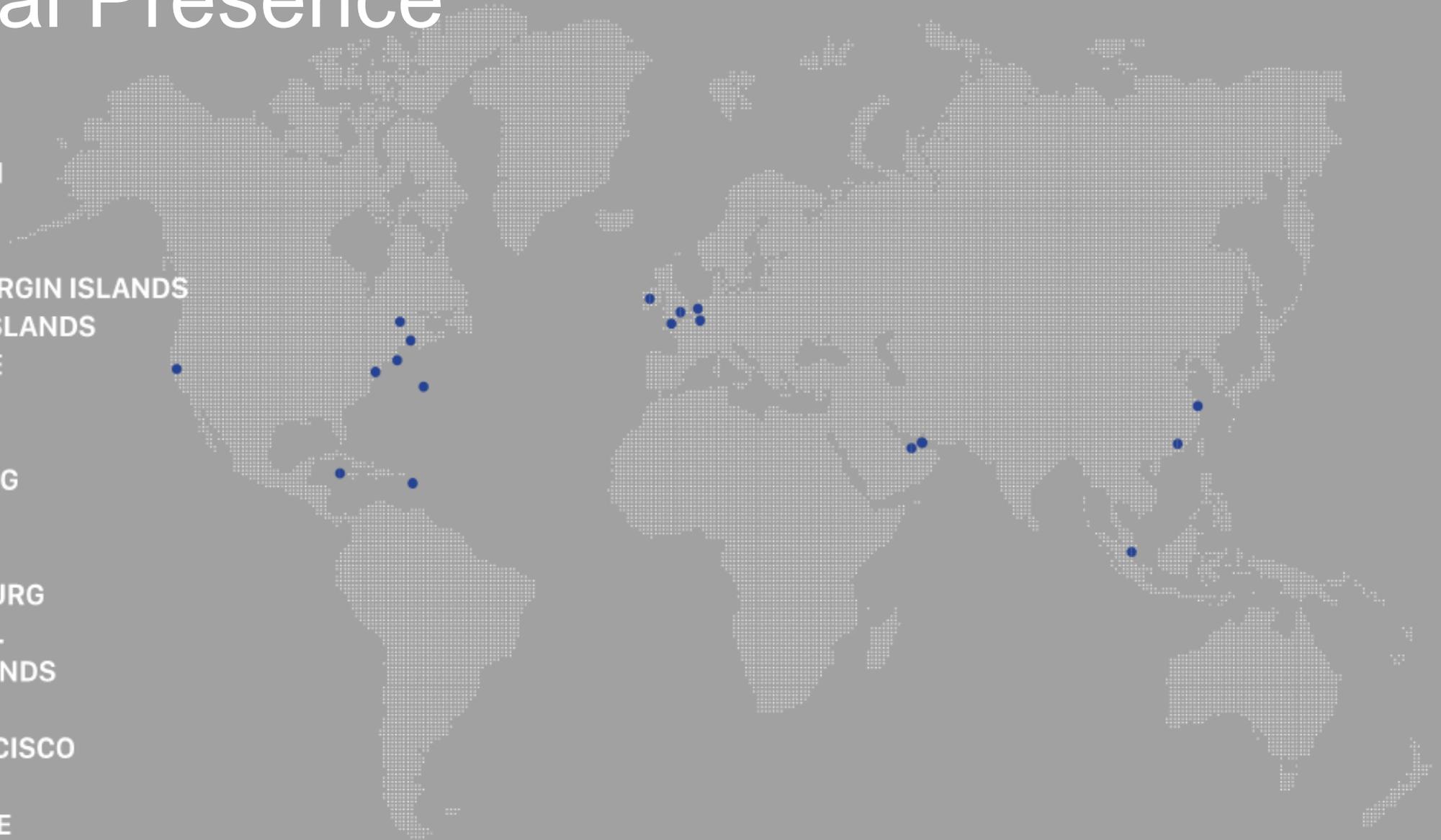


Eimear O'Dwyer
Partner, Funds & Investment
Management
+353 1 619 2065
eimear.o'dwyer@maples.com

- Questions
- Resources (www.maples.com/esg)

Global Presence

ABU DHABI
BERMUDA
BOSTON
BRITISH VIRGIN ISLANDS
CAYMAN ISLANDS
DELAWARE
DUBAI
DUBLIN
HONG KONG
JERSEY
LONDON
LUXEMBOURG
MONTREAL
NETHERLANDS
NEW YORK
SAN FRANCISCO
SHANGHAI
SINGAPORE





MAPLES
GROUP

The Maples Group provides clients with comprehensive legal, fund, fiduciary, regulatory and compliance and entity formation and management services.

[maples.com](https://www.maples.com)