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Which information should be public in financial markets? A practical overview of the Delegated Regulation on STRs

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The Regulatory Technical Standards (RTS), which complements the SFDR Regulation, determines the information that financial market participants must make public, at entity and product level, which will increase transparency and improve the comparability of financial products across financial services sectors.

The "*Regulation (EU) 2019/2088 of 27 November 2019 on sustainability disclosures in the financial services sector (SFDR)*" is an essential element of the EU Sustainable Finance Action Plan, which consists of a set of interrelated rules (such as the "*Taxonomy*" Regulation (EU) 2020/852), whose ultimate aim is to encourage sustainable investment and promote more transparency in terms of the information provided to investors regarding the environmental and/or social characteristics of financial products.

With a few exceptions, the SFDR entered into force on 10 March 2021 and is currently under development, with many issues still to be clarified.

In this regard, on 1 January 2023, Delegated Regulation (EU) 2022/1288 supplementing the SFDR with respect to *Regulatory Technical Standards* (RTS), which complements the SFDR Regulation, known as SFDR Phase II or Level 2, and which contains the regulatory technical standards for the reporting of sustainability information by financial market participants, entered into force.

Who must comply?

The SFDR applies to financial market participants (e.g. banks, insurers, asset managers and investment firms, including financial market participants with EU shareholders, as well as those promoting themselves in the EU) and EU financial advisors.

What do STRs require?

The SFDR imposes comprehensive sustainability disclosure requirements covering a wide range of environmental, social and governance (ESG) parameters at both entity and product level. Financial products must be designated as SFDR Article 6, 8 or 9 products and disclose certain information in line with this choice.

The SFDR legislation requires originators or advisors of financial products (including therefore, but not limited to, asset managers) to classify and frame them under one of these three articles:

- Article 6: products "without sustainability objectives". I.e. investment products that do not consider ESG risks or are expressly declared as "non-sustainable".
- Article 8: products that "promote social and environmental initiatives alongside traditional performance objectives". This means that, although they do not have a specific or defined sustainable objective, they do seek to promote so-called ESG characteristics.
- Article 9: products "with explicit sustainability objectives". These are all investment products that have a clear sustainability objective to be disclosed, as well as the way in which this objective is being pursued.

Furthermore, it is the entity that creates and/or provides advice in relation to an investment product that is responsible for determining in which article an investment product is positioned.

Without prejudice to the obligations of financial product developers or advisors to have sustainability risk integration policies and to publish information about these policies on their website, which were already provided for in the SFDR, the information requirements that have been developed by the RTS concern the following four areas: (1) Information on the main adverse impacts on sustainability factors; (2) mandatory pre-contractual information; (3) information to be published on the website; and (4) mandatory periodic information.

1. Information on major adverse impacts on sustainability factors

- **Level Entity**

At the entity level, the SFDR determines that, by 30 June each year, financial market participants that take into account the main adverse impacts of investment decisions on sustainability factors must publish on their website a due diligence policy statement in relation to the main adverse events (MAPs) identified in the previous calendar year.

In the case of financial market participants exceeding at the balance sheet date the criterion of an average number of 500 employees during the financial year, they are required to publish and maintain on their websites a statement of their due diligence policies in relation to the main adverse impacts of investment decisions on sustainability factors, including detailed indicators of environmental and social effects accompanied by explanations and commentary.

In both cases, such a declaration shall be published following the mandatory reporting template incorporated as Table 1 of Annex I to the RTS.

This template also elaborates, inter alia, on what information should be included as a summary of the PIAs of investment decisions and incorporates descriptions of the policies used to assess and actions taken to address sustainability PIAs, as well as engagement policies and a historical comparison where information has been published in previous years.

In addition, financial market participants should complete all fields in Annex I that relate to the PIA-related indicators of their investment decisions on sustainability factors.

- **Product level**

At the financial product level, pre-contractual documents should contain, inter alia, the following information:

  - Clear information on whether and how PIAs on sustainability factors are taken into account.
  - A statement that information on PIAs on sustainability factors is available in the annual reports.

2. Mandatory pre-contractual information

The RTS incorporate as Annex II a detailed and mandatory template in a question and answer format to be completed and attached to the pre-contractual disclosure documentation for financial products referred to in Article 8(1), (2) and (2a) of the SFDR. Obliged entities must indicate whether the product is intended for sustainable investments and whether it promotes environmental and social features. Information should also be provided on the environmental or social features that are promoted in the manner set out in that Annex. In this regard, questions relating to sustainable investments that promote environmental characteristics include the extent to which they comply with the EU taxonomy, including a graphical representation.

In turn, the RTS incorporate as Annex III a detailed and mandatory template in a question and answer format to be completed and attached to pre-contractual disclosure documentation relating to financial products referred to in Article 9(1) to (4a) of the SFDR. Among other things, obliged entities shall identify what the sustainable investment objective of the financial product is and which sustainability indicators are used to measure the achievement of the sustainable investment objective.

3. Information to be published on the website

The RTS provide for where and how information should be disclosed on websites, including the mandatory sections for financial products under Article 8 SFDR (Arts. 24 et seq. of the RTS) and for financial products under Article 9 SFDR (Arts. 37 et seq. of the RTS), what information should be included under each heading and how this information should be kept up to date.

Among other information to be disclosed, obliged entities should publish the data sources used to achieve each of the environmental or social characteristics promoted by the Article 8 financial product or the sustainable investment objective of the Article 9 financial product and the measures taken to ensure the quality of the data.

4. Mandatory periodic reporting

Another novelty introduced by the RTS are the templates for periodic information to be disclosed on a mandatory basis. This information must be annexed to the periodic reports following the templates attached to the RTS as Annex IV and V, respectively.

In this regard, Annex IV incorporates a template for periodic reporting of financial products referred to in Article 8(1), (2) and (2a) of the SFDR, while Annex V incorporates a template for periodic reporting of financial products referred to in Article 9(1) to (4a) of the SFDR.

These templates should be considered, together with the pre-contractual disclosure templates, as ex ante and ex post disclosures of the same detailed information and will, in practice, facilitate the accountability of the disclosures made in the pre-contractual documents.
In this regard, these templates require disclosure of the extent to which the promoted environmental and/or social features were actually met, as well as the degree of compliance with the sustainable investment objective of the financial product, as applicable.