

EU Taxonomy Regulation

Overview

What is it?

Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment and amend the Disclosure Regulation (known as the Taxonomy Regulation or Framework Regulation). It establishes a taxonomy, or glossary, for assessing whether certain economic activities are considered “sustainable” in accordance with one or more of six prescribed environmentally sustainable objectives. In time, the intention is to extend the taxonomy beyond purely environmentally sustainable objectives.

Impact on the industry

It provides a toolkit for assessing whether a fund or mandate is “*environmentally sustainable*” and therefore whether firms can justifiably promote that fund or mandate as such without “greenwashing” investors. If the fund or mandate meets the criteria, certain disclosures (in addition to those required under the Disclosure Regulation) are required so that investors can compare “*environmentally sustainable*” funds and services.

Application

The Taxonomy Regulation is already in force but the first of the disclosure obligations will not apply until **1 January 2022** at the earliest.

Scope

It applies to **financial market participants** that make available **financial products**.

“Financial market participants”	AIFMs, UCITS management companies, MiFID investment firms, managers of qualifying VC funds or qualifying social entrepreneurship funds, pan-European personal pension product providers, manufacturers of pension products and institutions for occupational retirement provision.
“Financial products”	AIFs, UCITS, portfolios managed under MiFID, IBIPs, pension products and PEPPs.

Additional disclosure obligations apply to undertakings required to publish non-financial information pursuant to Directive 2013/34/EU (Accounting Directive) which are not covered in this note.

Brexit implications

As the Taxonomy Regulation is already in force, the taxonomy will be on-shored at the end of the transition period. However, since the disclosure obligations within the Taxonomy

Regulation will not apply until 2022/23, they will not be on-shored as things stand. This leaves scope for regulatory divergence as between the EU and the UK on the detail of the disclosures, particularly given the UK’s stated aim to “lead from the front” on ESG. However, where UK firms offer funds and services in the EU, it is likely that the disclosure obligations of the Taxonomy Regulation will apply in full.

What is an “environmentally sustainable” activity?

A fund or mandate is “*environmentally sustainable*” under the taxonomy where its portfolio meets the following four conditions:

1. “**contributes substantially**” to one or more **environmental objectives** (see below), or directly enables other activities to make a substantial contribution to one or more of those objectives;
2. **does not “significantly harm”** any of the environmental objectives;
3. is invested in compliance with the **minimum specified safeguards** listed in the Taxonomy Regulation; and
4. complies with **technical screening criteria** established by the Commission (which are yet to be published).

What are the environmental objectives?

The Taxonomy Regulation sets out six environmental objectives (each as defined in the regulation):

1. climate change mitigation (Article 10);
2. climate change adaptation (Article 11);
3. sustainable use and protection of water and marine resources (Article 12);
4. transition to a circular economy (Article 13);
5. pollution prevention and control (Article 14); and
6. protection and restoration of biodiversity and ecosystems (Article 15).

The disclosure obligations within the Taxonomy Regulation apply from **1 January 2022** for the first two environmental objectives and from **1 January 2023** for the remaining four.

Next steps

Consider the Taxonomy Regulation disclosure obligations set out overleaf and begin to plan accordingly, whilst monitoring closely any publications from HMT and the FCA on this topic, in order to understand any potential domestic divergence.

Disclosure obligations under the Taxonomy Regulation

The table below summarises the information that must be disclosed under the Taxonomy Regulation in relation to financial products. The **pre-contract** and **periodic** disclosures must be included in the pre-contract and periodic disclosures made by the financial market participant in respect of its financial products pursuant to Articles 6 and 11 of the Disclosure Regulation. Such disclosures should also feature on the firm's **website** (in accordance with Article 10 of the Disclosure Regulation).

Financial product	Information to disclose	Disclosure	Deadline
Financial product which has a sustainable objective (Article 9 product)	<ul style="list-style-type: none">Information on the environmental characteristics to which the investment underlying the financial product contributes.A description of how and to what extent the investments underlying the product are made in economic activities that qualify as “<i>environmentally sustainable</i>”.The proportion of investments that are “<i>environmentally sustainable</i>”.	<ul style="list-style-type: none">Pre-contractPeriodicWebsite	1 Jan 2022 for climate change – related objectives. Otherwise, 1 Jan 2023
Financial product which promotes environmental or sustainable characteristics (Article 8 product)	<ul style="list-style-type: none">The same information required in relation to an Article 9 product (listed in the row above).A statement that the “do not significant harm” principle applies only to those underlying investments that take into account the EU criteria for environmentally sustainable activities, and that the remaining underlying investments do not take such criteria into account.	<ul style="list-style-type: none">Pre-contractPeriodicWebsite	1 Jan 2022 for climate change – related objectives. Otherwise, 1 Jan 2023
Other financial products	<ul style="list-style-type: none">A prescribed statement that the investments underlying the financial product does not take into account the EU criteria for environmentally sustainable economic activities.	<ul style="list-style-type: none">Pre-contractPeriodicWebsite	1 Jan 2022

Contacts



Lora Froud

Partner

DD +44 (0)20 7849 2409

lora.froud@macfarlanes.com



Tiffany Cox

Solicitor

DD +44 (0)20 7791 4178

tiffany.cox@macfarlanes.com

Macfarlanes LLP

20 Cursitor Street London EC4A 1LT

T +44 (0)20 7831 9222 | F +44 (0)20 7831 9607 | DX 138 Chancery Lane | macfarlanes.com

This note is intended to provide general information about some recent and anticipated developments which may be of interest. It is not intended to be comprehensive nor to provide any specific legal advice and should not be acted or relied upon as doing so. Professional advice appropriate to the specific situation should always be obtained. Macfarlanes LLP is a limited liability partnership registered in England with number OC334406. Its registered office and principal place of business are at 20 Cursitor Street, London EC4A 1LT. The firm is not authorised under the Financial Services and Markets Act 2000, but is able in certain circumstances to offer a limited range of investment services to clients because it is authorised and regulated by the Solicitors Regulation Authority. It can provide these investment services if they are an incidental part of the professional services it has been engaged to provide.

©Macfarlanes 2020 (1120) PN