

Overview of ESA's Opinion on SFDR

On 18 June, the three European Supervisory Authorities (together, the “**ESAs**”) published a [Joint Opinion](#) (the “**Opinion**”) addressed to the European Commission (the “**Commission**”), assessing the functioning of the EU Sustainable Finance Disclosure Regulation (“**SFDR**”) and setting out various recommendations to improve it. In giving its Opinion, the ESAs’ objective is to support the development of a more coherent sustainable finance framework that caters for the green transition and enhanced consumer protection. It was produced at the ESA’s own initiative, but against the backdrop of a more comprehensive review of the current SFDR framework by the Commission.

Recommendations put forward by the ESAs include introducing simplified and clearer categories for financial products. They suggest that the current SFDR Article 8 and Article 9 product designation categories are too broad and unclear for investors, and recommend replacing them with two new voluntary product categories built around certain minimum criteria. The proposed new categories are:

1. a new **sustainable product category** for products which invest in economic activities or assets that are already environmentally and/or socially sustainable; and
2. a new **transition product category** for products which invest in economic activities or assets that are not yet sustainable, but which improve their sustainability over time to become environmentally or socially sustainable.

With a view to reducing greenwashing, the Opinion also recommends new rules requiring appropriate disclosures for products outside the two categories above (i.e. the products which do not meet the criteria required under the new sustainable or transition categories).

For example, such products would not be allowed to use ESG or sustainability-related terms in their naming and marketing materials and may need to include a disclaimer with certain minimal disclosures on the product’s negative impact on sustainability, which would modify the current disclosure requirements for the SFDR Article 6 category. This recommendation appears to be aligned with certain findings from the Commission’s [Summary Report on the SFDR \(published May 2024\)](#) which suggest that many market participants support setting uniform disclosure requirements for all financial products offered in the EU, as well as additional disclosures for products making sustainability claims.

The ESAs also recommend that the Commission consider the introduction of a sustainability indicator that would grade financial products such as investment funds, life insurance and pension products. The indicator would group products according to how sustainable their investments are, focusing either narrowly by measuring climate change mitigation, or more broadly by grading investments according to their expected impact on the environment or society. The ESAs propose that the SFDR grading scale could resemble the energy performance certificate scales, with letter grading.

The Opinion also covers the following areas:

- improvements to the definition of “sustainable investments”: the ESAs suggest that the current definition of a “sustainable investment” under the SFDR and the definition of a “sustainable investment” for the purposes of the EU Taxonomy Regulation should be harmonised (where possible) and the EU Taxonomy definition should be used going forward for investments that contribute to environmental sustainability because it is more objective and science-based. The ESAs believe the Commission should focus on developing the social taxonomy to provide a science-based reference point for investments that contribute to social sustainability and to further develop and supplement the environmental taxonomy. Where it is not possible to rely on the EU Taxonomy to determine whether an investment is a “sustainable investment”, the ESAs consider that the Commission should specify other appropriate sustainability metrics which could, for example, relate to the current principal adverse impact indicators (the “PAIs”);
- simplification to the way disclosures are presented to investors, with distinction depending on the addressees of the disclosures;
- other technical suggestions including on which products should fall under the scope of SFDR and on how to improve disclosures regarding the negative impact of investments on people and the environment;
- further development of the PAIs regime, including drawing a clear distinction between “consideration” of PAIs and providing investors with “information” on PAIs; and
- the need for consumer testing before putting forward any policy proposals to review the SFDR, such as to introduce a categorisation system and/or an indicator.

Timing/Next Steps

It is currently unclear what the next steps and timing for any changes to the SFDR might be. As noted above, the ESAs have delivered the Opinion on their own initiative and the Commission has separately published findings from the official consultation on the SFDR.

The ESAs will support the Commission in future policy considerations on any review of the SFDR framework, however it is not clear if the Commission will seek to adopt any of their recommendations. Notwithstanding the lack of official position, there is a general market expectation that further clarity to the current Article 6, 8 and 9 categories is required.

For More Information

For any further information or questions on the SFDR or the ESAs Opinion, please contact the Authors below.



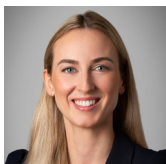
MARC SCHUBERT

+44 20 7903 1128
marc.schubert@weil.com



HANNAH LAURIE

+44 20 7903 1161
hannah.laurie@weil.com



KATE BYSTRYK

+44 20 7903 1171
katarzyna.bystryk@weil.com



AMY WADDINGTON

+44 20 7903 1469
amy.waddington@weil.com

Sustainability & ESG Contacts

M&A AND ENERGY TRANSITION:

MURRAY COX
murray.cox@weil.com

SIMON LYELL
simon.lyell@weil.com

BRENDAN MOYLAN
brendan.moylan@weil.com

AMY WADDINGTON
amy.waddington@weil.com

SUSTAINABILITY AND IMPACT FUNDRAISINGS (INCL. ENERGY TRANSITION):

JAMES BROMLEY
james.bromley@weil.com

HANNAH LAURIE
hannah.laurie@weil.com

JAMES SARGENT
james.sargent@weil.com

MARC SCHUBERT
marc.schubert@weil.com

SUSTAINABILITY LINKED / GREEN FINANCE:

ALEX EAGLE
alex.eagle@weil.com

ANDREW HAGAN
andrew.hagan@weil.com

ALASTAIR MCVEIGH
alastair.mcveigh@weil.com

STEVEN ONG
steven.ong@weil.com

DISPUTES AND ANTITRUST:

LUCY CHAMBERS
lucy.chambers@weil.com

MATTHEW GIBBON
matthew.gibbon@weil.com

JENINE HULSMANN
jenine.hulsmann@weil.com

HAYLEY LUND
hayley.lund@weil.com

BELLA SPRING
bella.spring@weil.com

CHRIS THOMAS
chris.thomas@weil.com

OTHER SUBJECT MATTER EXPERTISE:

BARRY FISHLEY
Intellectual Property
barry.fishley@weil.com

LAURA MURRAY
Real estate & Environmental
laura.murray@weil.com

THOMAS WEATHERHILL
Employment
thomas.weatherhill@weil.com

GLOBAL KEY CONTACTS:

ANNEMARGARET CONNOLLY
annemargaret.connolly@weil.com

LYUBA GOLTSER
lyuba.goltser@weil.com

REBECCA GRAPSAS
rebecca.grapsas@weil.com

MATTHEW MORTON
matthew.morton@weil.com

ROBERT STERN
robert.stern@weil.com

WEIL.COM

©2024 WEIL, GOTSHAL & MANGES (LONDON) LLP ("WEIL LONDON"), 110 FETTER LANE, LONDON, EC4A 1AY, +44 20 7903 1000, WWW.WEIL.COM.
ALL RIGHTS RESERVED.

WEIL LONDON IS A LIMITED LIABILITY PARTNERSHIP OF SOLICITORS, REGISTERED FOREIGN LAWYERS AND EXEMPT EUROPEAN LAWYERS AUTHORISED AND REGULATED BY THE SOLICITORS REGULATION AUTHORITY ("SRA") WITH REGISTRATION NUMBER 623206. A LIST OF THE NAMES AND PROFESSIONAL QUALIFICATIONS OF THE PARTNERS IS AVAILABLE FOR INSPECTION AT THE ABOVE ADDRESS. WE USE THE WORD 'PARTNER' TO REFER TO A MEMBER OF WEIL LONDON OR AN EMPLOYEE OR CONSULTANT WITH EQUIVALENT STANDING AND QUALIFICATION.

THE INFORMATION IN THIS PUBLICATION DOES NOT CONSTITUTE THE LEGAL OR OTHER PROFESSIONAL ADVICE OF WEIL LONDON. THE VIEWS EXPRESSED IN THIS PUBLICATION REFLECT THOSE OF THE AUTHORS AND ARE NOT NECESSARILY THE VIEWS OF WEIL LONDON OR OF ITS CLIENTS.

Weil