



■ Why does it matter to intermediaries?

Since 10 March 2021, insurance intermediaries providing advice on IBIPs and investment firms providing investment advice have to comply with some specific sustainability-related disclosure obligations under the **Sustainable Finance Disclosures Regulation (SFDR)**.

Since 2 August 2022, the **IDD and MiFID II** (and other sectoral legislation, i.e. AIFMD, UCITS, Solvency II) require insurance intermediaries distributing IBIPs and investment firms providing investment advice and portfolio management to integrate sustainability factors, risks and preferences into their decision-making process. These requirements include the identification of a customer's sustainability preferences during the suitability assessment and the identification of financial products matching these preferences. In order to comply with these requirements, intermediaries need to be able to rely on product information provided by manufacturers. Manufacturers of financial products therefore have to include in the product information document of each financial product, information regarding investment in sustainable economic activities under the SFDR or the Taxonomy Regulation.

In November 2023, BIPAR sent a working memo to its members that covers the main sustainability-related obligations that are relevant to intermediaries when providing advice. The objective of this memo is to provide an overview of relevant rules and some indications on how to comply with them.

■ State of play

Sustainable Finance Disclosures Regulation (SFDR)

The SFDR became applicable on **10 March 2021**. It introduces new sustainability-related disclosure obligations for insurance intermediaries providing advice on IBIPs and investment firms providing investment advice. Self-employed entities and entities with fewer than three employees are exempted from the scope unless Member States decide to opt-out of the exemption.

The sustainability-related obligations apply to all products under the scope of the SFDR whether or not they are designed as "green" products. There are disclosure obligations at entity and product levels. When acting as manufacturers, intermediaries will have to comply with additional disclosures at entity level, pre-contractual level and periodic levels.

The **Regulatory Technical Standards (RTS)** specifying the content and presentation for sustainability-related disclosures by manufacturers under the SFDR and the Taxonomy Regulation were adopted by the Commission in 2022 and started applying on 1 January 2023. These RTS require product manufacturers to use mandatory templates to make sustainability-related disclosures related to the sustainability features of financial products and to the principal adverse impacts (PAI) of relevant activities.

Taxonomy for sustainable economic activities

The **Regulation on the establishment of a framework to facilitate sustainable investment (the Taxonomy Regulation)** aims at channelling capital towards economic activities that substantially contribute to reaching the objectives of the European Green Deal. It is essentially a "Green list", a classification system for sustainable economic activities. The Taxonomy Regulation started applying on 1 January 2022 as regards environmental objectives (1) and (2) (climate change mitigation and adaptation) and on 1 January 2023 as regards environmental objectives (3) to (6) (water, circular economy, pollution prevention and biodiversity).

A first Delegated Act to the Taxonomy Regulation establishing technical screening criteria on climate change mitigation and adaptation was adopted in 2021 and started applying on 1 January 2022. It was complemented by a Taxonomy complementary climate change Delegated Act covering certain gas and nuclear activities which started applying on 1 January 2023.

On 27 June 2023, the Commission adopted another **Taxonomy Environmental Delegated Act**, including a new set of EU taxonomy criteria for economic activities making a substantial contribution to one or more of the non-climate environmental objectives, namely: sustainable use and protection of water and marine resources, transition to a circular economy, pollution prevention and control and protection and restoration of biodiversity and ecosystems. The adopted texts were published in the Official Journal of the EU on 21 November 2023 and applied as of January 2024.



EU Green Bond Standard

On 5 October 2023, the EP formally adopted the agreement reached during trilogue negotiations on the Regulation on European Green Bonds (EuGB). On 23 October 2023, the Council did the same. The Regulation sets out requirements for EU and non-EU issuers of bonds who wish to use the designation “EuGB” for their environmentally sustainable bonds that are aligned with the Taxonomy and made available to investors in the EU. It establishes a registration system and supervisory framework. It also provides that all proceeds of EuGBs will need to be invested in Taxonomy-aligned economic activities, provided the sectors concerned are already covered by the Taxonomy.

Some of the main features of the Regulation are:

- 100% of the proceeds of EuGB must be invested in economic activities that are Taxonomy-aligned, provided these activities are already covered by the Taxonomy and its screening criteria,
- The Regulation allows for a flexibility pocket of 15% of proceeds invested in activities not yet covered by the Taxonomy screening criteria. This pocket will be reexamined as the Taxonomy continues to develop,
- Bonds issued by non-cooperative tax jurisdictions cannot adopt the denomination,
- External reviews of EuGB will need to register with ESMA and be subjected to a supervisory framework provided for in the Regulation,
- Other bonds marketed as environmentally sustainable or sustainability-linked can decide voluntarily to comply with some disclosure requirements and templates,
- ESMA is given supervisory powers regarding EuGB external reviewers (requests for information, general investigation powers, on-site inspections, etc.),
- The Regulation will be reviewed five years after its entry into force.

Corporate Sustainability Due Diligence Directive (CSDDD)

On 23 February 2022, the European Commission presented a proposal for a Directive on corporate sustainability due diligence (CSDDD). The objective of the proposal is to set a horizontal framework to foster the contribution of businesses operating in the Single Market to the respect of human rights and the environment by implementing due diligence measures into their own operations, those of their subsidiaries and through their value chains.

The proposal sets out a number of due diligence obligations for “very large” EU and non-EU companies (net turnover of at least EUR 150 million and at least 500 employees) as well as some more limited obligations for certain “large” EU and

non-EU companies (net turnover of at least EUR 40 million and at least 250 employees) operating in “high-impact sectors” such as textile manufacturing, agriculture or mineral extraction. SMEs are exempted from the scope of the obligations but might be affected when they are part of the value chain of a company within the scope of the obligations.

The concept of the value chain is important since companies do have due diligence obligations regarding the conduct of business partners within their value chain. The proposal describes it as activities related to the production of goods or provision of services by a company, including the development of the product/service and use or disposal of a product, as well as related activities of established business relationships. It further explains that the notion of “value chain” encompasses upstream and downstream business relationships ranging from the supply, transport or storage of raw materials, to dismantling, recycling or landfilling of the product.

The obligations mostly consist of integrating due diligence into corporate policies and management systems. The proposal requires companies to have processes in place to identify risks of adverse environmental or human rights impacts and to prevent, mitigate or bring to an end actual adverse impacts. It also requires them to set up complaints procedures and to communicate publicly on their due diligence efforts.

The Commission, the EP and the Council entered into interinstitutional negotiations (trilogue) and agreed on a common position in December 2023. The EP approved the text on 24 April 2024. The Council formally adopted the Directive on 24 May 2024. Following the Council’s approval of the EP’s position, the legislative act has been adopted.

Delegated Act regarding European Sustainability Reporting Standards (ESRS) for companies under the CSRD

On 31 July 2023, the European Commission adopted a Delegated Act regarding European Sustainability Reporting Standards (ESRS) for all companies subject to reporting requirements under the Corporate Sustainability Reporting Directive (CSRD). The objective of the CSRD and the ESRS is to provide investors with information on the sustainability impact of the companies in which they invest by ensuring that companies across the EU report comparable and reliable sustainability information.

The CSRD and ESRS apply to all large companies and to all listed companies (including listed SMEs but excluding microenterprises) including undertakings in the financial



sector. Under the CSRD, large undertakings are undertakings exceeding two of the following criteria: balance sheet total of EUR 4 million, net turnover of EUR 8 million, an average number of 50 employees during the financial year. Intermediaries falling within that definition and listed intermediaries (except for microenterprises) are in scope.

The ESRS provide information on the content of the reporting obligations contained within the CSRD and are mandatory for companies subject to reporting requirements under the CSRD. The ESRS addresses environmental, social and governance issues. Because of their material scope, the CSRD and ESRS reporting requirements cover some of the topics covered by other sectoral legislations. This means, for instance, that some of the information to be disclosed by Financial Market Participants under the SFDR is covered by some data points included in the ESRS Delegated Act. This information can then be used by Financial Market Participants to make their own disclosures under the SFDR.

ESMA's call for evidence on the integration of sustainability preferences in the MiFID II suitability assessment

On 16 June 2023, ESMA published a call for evidence regarding the integration of sustainability preferences in suitability assessments and POG arrangements by investment firms under the MiFID II framework. The call for evidence aimed at gathering input from stakeholders to help ESMA to:

- gain a better understanding of how the MiFID II requirements are being implemented and applied by firms and the challenges firms are facing in their application,
- gain a better understanding of investor experiences and reactions to the integration of sustainability factors in investment advice and portfolio management,
- collect information, views and data on main trends and aspects.

ESMA specified that this call for evidence was not intended as a new consultation on the content of the suitability guidelines or the content of the sustainability requirements altogether. BIPAR responded to the call for evidence and highlighted some of the challenges faced in daily operations by its members.

ESMA published all responses received and continues, along with NCAs, to monitor the application of sustainability requirements by investment firms.

Commission's consultation on the implementation and possible review of the Sustainable Finance Disclosures Regulation (SFDR)

On 14 September 2023, the European Commission launched a consultation on the implementation and possible future review of the SFDR. BIPAR responded to the consultation.

The SFDR became applicable in 2021 and introduced sustainability-related disclosure obligations for financial market participants (FMPs, i.e. product manufacturers such as insurers) **and financial advisers (i.e. distributors such as insurance intermediaries distributing IBIPs and investment firms providing investment advice)**. However, self-employed entities and entities with fewer than three employees are exempted from the scope of the SFDR unless Member States decide to opt out of this exemption. The sustainability-related disclosure obligations apply at both entity and product level. When acting as manufacturers, intermediaries have to comply with additional disclosure obligations. The SFDR contains two categories of "sustainable investment" products. These are "Article 8 products" that promote environmental and social characteristics and "Article 9 products" that have sustainable investment as their objective.

Some of the key issues addressed by the consultation are:

- An assessment of the current state of the SFDR including whether it meets its objectives and is effective and what are the costs associated with implementing it.
- The way the SFDR interacts with other EU legislation (including the IDD and MiFID II) and whether there are any inconsistencies or misalignments.
- Potential changes for the SFDR disclosures framework, such as potential disclosure obligations applicable to all financial products, regardless of their sustainability claims (as to not put ESG products at a disadvantage).
- **The potential creation of a categorisation system for financial products with sustainability features**, which would address the fact that the SFD is currently used as a labelling system despite having been designed as a disclosure framework.

The Commission organised a **workshop on the future of the SFDR on 10 October 2023** (recording available - see link below) in which the BIPAR Secretariat took part. The keynote address was given by **Commissioner McGuinness** who insisted on the fact that, at this point, the foundations of the EU sustainable finance framework were in place. According to her, the sustainable finance legislation led to increased transparency of sustainability claims, but some issues are arising. For instance, the Commissioner stated that the SFDR, which is a disclosures framework, is currently being used more like a labelling system, with products being advertised



as light green or dark green under its Articles 8 and 9. Since the SFDR was not intended to be a labeling scheme, it lacks definitions of key concepts as well as relevant thresholds. The use of the SFDR as a labeling system can therefore lead to uncertainty for investors and risks of greenwashing. The Commissioner closed her keynote address by stating the need for a holistic approach to a potential review to make sure the SFDR remains consistent with other pieces of EU legislation.

EIOPA's consultation on sustainability claims and greenwashing for pensions and insurance

On 12 December 2023, EIOPA published a consultation paper on its draft opinion on sustainability claims and greenwashing in the insurance and pensions sectors. The objective of the draft opinion is to pave the way for a more effective and harmonized supervision of sustainability claims across Europe and limit the risks of greenwashing. BIPAR responded to the consultation.

This draft opinion is addressed to NCAs and aims at providing them as well as insurance and pensions providers (who include insurance undertakings, PEPP providers, **insurance distributors** and IORPs) with general principles regarding sustainability claims in the insurance and pensions sector.

This new initiative accompanies wider efforts by the European Commission and the ESAs to tackle the issue of greenwashing. For instance, in June 2023, the ESAs released their progress reports on greenwashing which contain, amongst others, a common understanding of the term "greenwashing" and examples of practices that can constitute greenwashing in different sectors (including insurance distribution).

This new consultation **focuses specifically on the insurance and pensions sectors**. According to EIOPA, the rise in demand for sustainable financial products has been accompanied by a rise in the offer of products with sustainability features but also increased risks of greenwashing. Some NCAs have also informed EIOPA that they have observed instances of greenwashing in their markets but are not always equipped to supervise these effectively.

Brief summary of the content of the consultation paper:

EIOPA's draft opinion regards the **risks of greenwashing arising from sustainability claims** (i.e. "any claims related to the sustainability profile of an entity or a product"). These claims can arise in the context of regulatory disclosures (ex: SFDR or Taxonomy disclosures) or in the context of marketing communications.

The opinion tackles the **risk of "misleading" sustainability claims**. In this context, "misleading" can mean, inter alia, selective disclosures, empty claims, omissions or lack of disclosures, vagueness or lack of clarity, outdated information, etc. All these practices can lead to customers buying financial products that do not fit their sustainability preferences.

To establish a common understanding and a harmonised approach to supervision of sustainability claims, **EIOPA proposes 4 general principles to be observed by product providers (including distributors) and supervised by NCAs. These principles should apply to all products under EIOPA's remit. This means they should apply to all insurance products, including non-life insurance, independently from the specific regulatory requirements applicable to certain types of products (such as IBIPs).** The 4 principles are the following:

- **Principle 1:** sustainability claims made by a provider should be accurate, precise and consistent with the provider's overall profile and business model or the profile of its product(s).
- **Principle 2:** sustainability claims should be kept up to date, and any changes should be timely disclosed and with a clear rationale.
- **Principle 3:** sustainability claims should be substantiated with clear reasoning and facts.
- **Principle 4:** sustainability claims and their substantiations should be accessible by the targeted stakeholders.

EIOPA's consultation paper contains specifications on how to apply each principle in practice and provides some examples of good and bad practices. It also contains some guidance addressed to NCAs when supervising sustainability claims.



Some of the specifications on how to apply the principles focus on distributors (including insurance intermediaries).

For instance:

- **Under Principle 1**, EIOPA specifies that, during the delivery process, distributors should maintain accuracy and consistency of sustainability claims while ensuring that any sustainability claim matches the consumer's sustainability preferences. EIOPA adds that distributors should be knowledgeable enough about the products their offer to be able to represent them accurately to their clients.
- **Under Principle 3**, EIOPA insists on the importance for distributors to substantiate their product recommendations based on the sustainability information provided by the manufacturer (and while taking into account the customer's sustainability preferences).
- **Under Principle 4**, EIOPA emphasises the need for distributors to ensure, when conducting suitability assessments, that customers have a good understanding of the notion of sustainability preferences and of the integration of certain sustainability aspects in their investments. Distributors should be able to provide these explanations with clear, succinct, and comprehensible language.

■ BIPAR's position / key messages

On the framework as a whole, BIPAR insists on the following points:

- **Flexibility**: the entire framework is still developing, moreover, it is developing in an asymmetrical way with different texts having different application dates. This developing framework demands a lot of adaptation from intermediaries, manufacturers and customers. Therefore, and especially in the early years of application of the different legislations, it should allow for flexibility as to not put too much pressure on the different stakeholders.
- **Proportionality**: the principle of proportionality for Delegated Acts is enshrined in the IDD (Article 30(6)) which specifies that Delegated Acts shall take into account the nature of the services, the type and size of transactions, the nature of the products and the retail or professional nature of the customer. This principle should be reflected throughout the framework. For instance, this should allow intermediaries to adapt the information delivered to customers based on the retail or professional nature of said customers.
- **Need for clear, reliable and correct information**: Product oversight and governance requirements are key in this process and can ensure that investors and intermediaries can have full confidence in the information provided by manufacturers.

- **No excessive burden**: the amount of information to be requested from customers and the amount of information to be communicated to customers can lead to documentation overload which might deter customers from wanting to invest in sustainable products.
- **No excessive complexity**: the framework as a whole is very technical and complex. Intermediaries need to be allowed to make arrangements to help customers understand it. This includes the possibility of using more generic, less technical language when communicating with customers about sustainability preferences.

EIOPA's consultation on sustainability claims and greenwashing for pensions and insurance

In its response to EIOPA consultation, BIPAR stated the following:

- BIPAR generally agrees with the objectives of the draft opinion and with the principles drafted by EIOPA,
- BIPAR is somewhat concerned about some of the responsibilities attributed to insurance distributors (i.e. intermediaries) that it believes should ultimately rest on manufacturers (mostly POG requirements),
- BIPAR emphasizes again the current complexity of the sustainable finance framework, its lack of clarity, its lack of harmonisation and the related costs and burden it entails for intermediaries,
- The focus should be on making the current framework less obscure and burdensome and on providing clarity to intermediaries and customers.

Commission's consultation on the implementation and possible review of the SFDR

BIPAR agrees with the stated objectives of the SFDR but believes the SFDR is mostly unsuccessful in reaching these objectives:

- The SFDR lacks clarity both for Financial Market Participants (FMPs) and advisors and end investors. This might deter consumers from investing in ESG products and could also lead to greenwashing.
- Some requirements contained in the SFDR do not seem to have any clear usefulness to financial advisors, FMPs or customers (ex: Article 6 and Article 6(2) SFDR).
- The entire sustainable finance framework is too complex and lacks harmonisation which makes it very difficult for financial advisors to apply in practice.
- The lack of access to accurate, good-quality data is an issue for financial advisors who must recommend products that fit their clients' sustainability preferences.
- The framework should endure good-quality, harmonised disclosures by manufacturers so that advisors can rely on the disclosed data in order to provide accurate and suitable advice.



- The complexity and lack of clarity of the SFDR and its key concepts make it difficult for financial advisors (which include insurance intermediaries) to comply with their obligations under the IDD and MiFID II Delegated Acts on sustainability preferences.
- Advisors often face an issue related to the lack of availability of certain products (ex: Taxonomy-aligned products).
- BIPAR is not, in principle, opposed to the development of an actual sustainability-based categorisation system for financial products, based on well-defined, easily understandable categories. But any such system should be developed in order to simplify the process and not add undue burden. It should also be 100% voluntary.
- Any such categorisation should be built upon existing concepts and categories (such as Articles 6/8/9 SFDR) which should all be better defined and developed in order to avoid uncertainty.
- Any such categorisation should then be aligned with any potential future rules on naming conventions for financial products.

■ Next steps

Regarding the EU Green Bond Standard: the Regulation was published in the Official Journal of the EU on 30 November 2023 and will apply from 21 December 2024.

Regarding EIOPA's consultation on sustainability claims and greenwashing for pensions and insurance: EIOPA gathered feedback on its draft opinion until March 2024. It is currently examining the comments received and will publish a final version of its opinion shortly. EIOPA's opinions aim at building a common EU supervisory culture and consistent supervisory practices and to ensure consistent procedures and approaches throughout the EU.

The Delegated Act regarding European Sustainability Reporting Standards (ESRS) for companies under the CSRD was published in the Official Journal on 22 December 2023. The CSRD reporting obligations and, therefore, the ESRS will start applying based on a phase-in approach depending on the size of the company:

- Reporting in 2025 for the financial year 2024 for large companies that were already subject to the Non-Financial Reporting Directive (NFRD).
- Reporting in 2026 for the financial year 2025 for large companies not currently subject to the NFRD.
- Reporting in 2027 for the financial year 2026 for listed SMEs, small and non-complex credit institutions and captive insurance undertakings. Listed SMEs can benefit from a two-year opt-out clause and can start reporting in 2029 for the financial year 2028.
- Reporting in 2029 for the financial year 2028 for in-scope large third country undertakings.

Regarding the CSDDD: After being signed by the President of the European Parliament and the President of the Council, the Directive will be published in the Official Journal of the European Union and will enter into force on the twentieth day following its publication.

Member States will have two years to transpose the new rules into their national laws. The new rules (except for the communication obligations) will apply gradually to EU companies (and non-EU companies reaching the same turnover thresholds in the EU):

- From 2027 to companies with over 5000 employees and worldwide turnover higher than 1500 million euro,
- From 2028 to firms with over 3000 employees and a 900 million euro worldwide turnover,
- From 2029 to all the remaining companies within the scope of the Directive (including those over 1000 employees and worldwide turnover higher than 450 million euro).

■ Links

- SFDR
- Delegated Regulation (EU) 2022/1288 SFDR RTS
- Taxonomy Regulation
- First Delegated Act to the Taxonomy Regulation
- Taxonomy Environmental Delegated Act
- Regulation on European Green Bonds (EuGB)
- Proposal for a Directive on corporate sustainability due diligence (CSDDD) - Council's formal adoption of the CSDDD on 24 May 2024
- Delegated Act regarding European Sustainability Reporting Standards (ESRS)
- Corporate Sustainability Reporting Directive (CSRD)
- ESMA's call for evidence on the integration of sustainability preferences in the MiFID II suitability assessment - All responses received
- Recording of the Commission's workshop on the future of the SFDR (10 October 2023)
- Non-Financial Reporting Directive (NFRD)
- Progress Reports by EIOPA, ESMA and EBA