



QUESTIONS AND ANSWERS ON SUSTAINABILITY
REGULATIONS APPLICABLE TO FINANCIAL PRODUCTS:
REGULATION 2019/2088 (SFDR) AND REGULATION 2020/852
(TAXONOMY)

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This document is not regulatory. Its purpose is to transmit to the sector, and specifically to financial market participants, interpretation criteria for an adequate implementation of the information obligations which are applicable from 10 March 2021, pursuant to Regulation 2019/2088 (SFDR).

1. INTRODUCTION

The CNMV has contacted the main sector associations for the management of vehicles and provision of investment services in order to identify and collect the issues that may raise interpretative uncertainties or concerns following the entry into force of Regulation 2019/2088 (SFDR) on 10 March 2021. Uncertainties may derive from both the novel nature of the regulation and from the fact that a large part of its content is still being developed at RTS level, and that there are issues in this area that have not yet been clarified by the European Commission.

The CNMV's Activity Plan for 2021 includes the dissemination of criteria on the application of new European regulations on ESG (Environmental, Social and Governance) matters. Therefore, this document sets out the interpretive criteria that are to be considered correct based on the information that is currently available in relation to the questions raised. However, it should be taken into account that some of the questions included have also been raised in different areas at European level (European Commission, EC and the Joint Committee of the three European Supervisory Authorities, ESAs) and their answers are still pending.

For all these reasons, the criteria included in this document could be subject to review as more information becomes available, and new questions may also arise. In this case the review date will be stated.

Glossary

Regulation (SFDR)	Regulation (EU) 2019/2088, of 27 November 2019, on sustainability-related disclosures in the financial services sector. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R2088&from=EN
Regulation (Taxonomy)	Regulation (EU) 2020/852 of the European Parliament and of the Council, of 18 June 2020, on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R0852&from=EN
RTS of the SFDR	Final report of the European Supervisory Authorities (ESAs), published on 4 February 2021, which contains the draft regulatory technical standards with the content, methodologies and presentation of the information in the Disclosure Regulation.

Letter to the EC	Letter from the European Supervisory Authorities (ESAs) sent to the European Commission on 7 January 2021, on priority issues regarding the interpretation of the Disclosure Regulation. Letter to EU Commission on priority issues relating to SFDR application (europa.eu)
CNMV statement	Statement on the application of the regulation on sustainability-related disclosures in the financial services sector of 18 February 2021. https://www.cnmv.es/portal/verDoc.axd?t=%7B177791b4-e6e9-4c05-bbc2-d4550bcddfc4%7D
Supervisory statement	Communication from the European Supervisory Authorities (ESAs), published on 25 February 2021, with recommendations on the application of the Disclosure Regulation. https://www.esma.europa.eu/file/111856/download?token=mn2J8Alk
FMP	Financial market participants, as defined in Article 2 (1) of the Regulation (SFDR).
FA	Financial adviser, as defined in Article 2 (11) of the Regulation (SFDR).
ESAs	The European Supervisory Authorities, established through Regulation (EU) 1095/2010, which creates a European Securities and Markets Authority (ESMA), Regulation (EU) 1093/2010, which creates the European Banking Authority (EBA) and Regulation (EU) 1094/2010, relative to the European Insurance and Retirement Pensions Authority (EIOPA).
Joint committee	A joint committee that acts as a forum of cross-sector cooperation for the European Supervisory Authorities.
DNSH	Principle established in Article 2 (17) of the Regulation (SFDR), in the sense that investments in an economic activity are sustainable investments that not only must contribute to the achievement of an environmental or social objective, but also can do no significant harm to any of these objectives, and in Article 3 of the Taxonomy Regulation, which establishes the requirements for an economic activity to be classified as environmentally sustainable, among which is that it must do no significant harm to any of the environmental objectives referred to in Article 9.
Principal adverse impacts (PAIs)	Incidents relating to investment advice and decisions that have negative impacts on sustainability factors.

Technical screening criteria, in the sense of the definition of the Taxonomy Regulation. Delegated acts to be approved by the European Commission that define the requirements that an economic activity must meet in order for it to be considered environmentally sustainable and that it does no significant harm to the rest of the objectives. On 21 April 2021, the European Commission approved the first delegated act (which will be applicable from 1 January 2022) in which the technical screening criteria are established to determine whether an economic activity contributes to the first two environmental objectives established in sections a) and b) of Article 9 of the Taxonomy Regulation (climate change mitigation and climate change adaptation) and whether said economic activity does any significant harm to any of the other environmental objectives established in the article. See the following links for information on this delegated act:

https://ec.europa.eu/finance/docs/level-2-measures/taxonomy-regulation-delegated-act-2021-2800_en.pdf

https://ec.europa.eu/finance/docs/level-2-measures/taxonomy-regulation-delegated-act-2021-2800-annex-1_en.pdf

https://ec.europa.eu/finance/docs/level-2-measures/taxonomy-regulation-delegated-act-2021-2800-annex-2_en.pdf

2. SCOPE OF APPLICATION

1. **What criteria must an economic activity meet to be considered sustainable under the terms of Regulation 2019/2088 (SFDR)? What does the principle of “do no significant harm” (DNSH) referred to in Article 2.bis of the aforementioned Regulation mean?**

CNMV response

The SFRD Regulation does not define sustainable economic activities (this is the competence of the Taxonomy Regulation), but sustainable investments. Article 2.17 of Regulation 2019/2088 (SFDR) defines sustainable investments as investments in an economic activity that contributes to environmental or social objectives measured through key indicators, some of which are listed in this article, provided that such investments do no significant harm to any of those objectives and that the investee companies follow good governance practices.

Article 2.bis (SFDR) provides for the development of regulatory technical standards that specify in detail the content and presentation of the information in relation to the principle of "do no significant harm" established in Article 2.17 of this Regulation in accordance with the content, methodologies and presentation of the sustainability indicators for adverse impacts mentioned in Articles 4.6 and 4.7 of the same Regulation. The draft of these technical standards submitted to the European Commission establishes in Recital 33 that the principle of doing no significant harm to environmental or social objectives is linked to the disclosure of the principal adverse impacts of investment decisions on sustainability factors. For this reason, disclosures of financial products related to the "do no significant harm" principle should explain how indicators of principal adverse impacts have been taken into account. Additionally, in line with the stipulations of the recital that binds the principle to the disclosure of principal adverse impacts, various articles of the draft establish how to report compliance with the principle of "do no significant harm".

The Taxonomy Regulation 2020/852 also refers to the principle of "do no significant harm". In the specific case of investments in activities with an environmental objective, Article 3 of Regulation 2020/852 (Taxonomy) indicates that an economic activity will be considered environmentally sustainable when it: i) contributes substantially to one or more of the six defined environmental objectives (mitigation and adaptation of climate change; sustainable use and protection of water and marine resources; transition towards a circular economy; prevention and control of pollution; protection and recovery of biodiversity and ecosystems; ii) does no significant harm to the remaining objectives (DNSH); iii) complies with the minimum guarantees required, such as the OECD Guidelines for Multinational Enterprises and the United Nations Guiding Principles on Business and Human Rights, and iv) complies with the technical screening criteria (TSC) established by the European Commission.

The Regulation itself also provides for the implementation of delegated acts by the European Commission (EC) defining the technical screening criteria (TSC) that determine the conditions under which an economic activity is considered to contribute substantially to the aforementioned objectives and does no significant harm to one or more of those objectives (DNSH). Therefore, the scope of these delegated acts will become known as they are developed.

Further, Recital 6 of the Taxonomy Regulation establishes that complementary guidelines may be drawn up in relation to other sustainability objectives, including social objectives, known as "Social Taxonomy", at a later stage. In this context, there is also the possibility of extending the taxonomy to cover economic activities that significantly harm environmental sustainability.

- 2. In the case of financial products that are closed-ended collective investment vehicles governed by Law 22/2014, does Regulation 2019/2088 (SFDR) apply only to those for which the marketing or investment period is open, or should it apply to all products?**

CNMV response

Regulation 2019/2088 (SFDR) does not contain any exceptions in this regard, so financial market participants (FMPs) should include on their websites and in their pre-contractual information for these products, the information established by the Regulation, regardless of whether the marketing and investment period is open or closed. In this sense, a literal interpretation would suggest that even in the event that the marketing period has ended, it would be necessary to change the prospectus to adapt it to the Regulation. However, there is no special supervisory interest in this area given that prospectuses of this type will not be used to market vehicles.

- 3. Are there any limitations regarding the possibility of using ESG (environmental, social and governance) expressions or elements in the commercial names of financial products that fall within the scope of Regulation 2019/2088 (SFDR)? Or any other limitations on commercial communications in general?**

CNMV response

This issue was raised in the letter sent to the European Commission (EC) by the three European Supervisory Authorities (ESAs) on 7 January 2021. Given the lack of clarification and notwithstanding other criteria that may be adopted at European level, it is considered that the following requirements must be met:

1. CISs that were registered as Socially Responsible Investments (SRIs) before the entry into force of Regulation 2019/2088 (SFDR) may continue to use the SRI features that they promote in their commercial name.
2. All other CISs that, after the entry into force of the Regulation, wish to be classified as a financial product pursuant to Article 8, may include ESG elements in their name only if the minimum amount of investments indicated in their prospectus to achieve the environmental or social characteristics that they promote is greater than 50%.
3. Beyond their name, in regard to the use of ESG elements in commercial communications in general, only the financial products referred to in Article 8 or 9 of the Regulation may include these terms, provided that the content of the advertising message is aligned with the information contained in the prospectus.

Points 2 and 3 above are also applicable to closed-ended vehicles regulated by Law 22/2014.

3. PRE-CONTRACTUAL INFORMATION

4. What guidelines must management companies follow to register a CIS prospectus with the CNMV to which Article 8 or 9 of Regulation 2019/2088 (SFDR) applies? Are there any specific rules for closed-ended vehicles regulated by Law 22/2014?

CNMV response

The management companies of CISs registered as “Socially Responsible Investments” (SRI) prior to the entry into force of Regulation 2019/2088 (SFDR) will have to review the pre-contractual information and carry out an analysis of compliance with the transparency requirements established by the Regulation. However, given the lack of implementing regulations, it is considered that in general and without prejudice to the review that each management company must carry out, the information contained in the prospectuses of these funds, in accordance with the criteria applied up until that time, could be considered sufficient to comply with regulatory requirements.

In any case, until the technical standards for the development of the SFDR Regulation have been approved, it is considered that in the prospectus, or document annexed to it, of the CISs referred to in Article 8 or 9 of the SFDR Regulation, the manager must include at least the following information:

CISs regulated by Article 8:

1. An indication that the CIS promotes environmental or social characteristics (this information will be reflected in the prospectus by selecting the corresponding option in the external application of the prospectus).
2. An indication of the environmental or social characteristics that the CIS promotes.
3. A description of the type of investment strategy used to achieve the environmental or social characteristics promoted by the CIS.
4. A description of the binding elements of the investment strategy used in the selection of investments to achieve the environmental or social characteristics promoted by the CIS.
5. A narrative explanation of the CIS investments that must include the minimum percentage of investments used to achieve the environmental or social characteristics promoted.
6. An indication, where appropriate, of whether a specific benchmark index has been designated to determine whether the CIS is aligned with the environmental or social characteristics that it promotes, and how this benchmark is consistent with these characteristics, as well as information on where to find the methodology used to calculate the index.

Standard templates have been made available for management companies on the CNMV's website to enable them to certify the inclusion of this information in the corresponding prospectuses.

CISs regulated by Article 9:

1. An indication that the objective of the CIS is sustainable investment.
2. An indication of the sustainable investment objective of the CIS, mentioning the sustainability indicators used to measure the achievement of the sustainable investment objective.
3. Description of the type of strategy followed by the CIS, indicating:

The binding elements of the investment strategy that are used to select the investments to achieve the sustainable investment objective.

How this strategy is implemented in the investment process on an ongoing basis.

The policy for evaluating the good governance practices of the companies in which it invests.

4. Information on the expected allocation of assets of the CIS, indicating the minimum percentage of investments that are classified as sustainable investments and the percentage of the remaining investments that are not classified as such ("Other"). The following indications shall also be included:

Which investments are included under "Other", their purpose and whether there are any minimum environmental or social safeguards.

How the proportion and use of such investments does not affect the achievement of the sustainable investment objective.

How the use of derivatives, where applicable, achieves the sustainable investment objective.

How sustainable investments will contribute to the sustainable investment objective and do no significant harm to any sustainable investment objectives, further noting:

- how indicators of adverse impacts on sustainability factors are taken into account,
- whether sustainable investments are aligned with the OECD Guidelines for Multinational Enterprises and the United Nations Guiding Principles on Business and Human Rights.

5. An indication of whether the CIS takes into account the principal adverse impacts on sustainability factors? (YES /NO)
6. Information on where to find more product information.

(A hyperlink to the website must be included containing the information set out in Article 10 of the SFDR Regulation)

7. An indication of whether a specific index has been designated as a sustainable benchmark to meet the sustainable investment objective. The following information will also be provided:

How the benchmark takes into account sustainability factors so that it continually aligns with the sustainable investment objective.

How the alignment of the investment strategy with the index methodology is ensured at all times.

Why and how the designated benchmark differs from a broad market index.

The prospectuses issued by closed-ended vehicles regulated by Law 22/2014, which are regulated by Article 8 or 9, must also include the minimum information referred to above.

5. Is there any obligation for management companies to update their CIS prospectuses after the entry into force of Regulation 2019/2088 (SFDR)?

CNMV response

The CNMV's statement regarding the updating of investment fund prospectuses to adapt them to the requirements of Articles 6 and 7 of the Regulation (Transparency of the integration of sustainability risks and Principal adverse impacts on sustainability factors, respectively) explains that for CIS management companies a simplified procedure has been developed to allow the agile incorporation of the information into registered prospectuses. Likewise, as in question 4 above, the obligations for the financial products referred to in Articles 8 and 9 of the Regulation are included.

In the case of vehicles regulated by Law 22/2014, the characteristics of their prospectuses makes it impossible to allow a simplified procedure to be developed similar to that for investment funds. However, to help the management companies to more easily comply with this obligation, if they consider it appropriate, they may, prior to applying to register the updated prospectuses, submit a signed document to the CNMV, which includes the texts that they plan to include to comply with the provisions of the Regulation, identifying the vehicles concerned. The CNMV will reply to the management company with its observations on the content of the document and latter will then proceed to make an application to the CNMV to update the prospectuses, attaching a letter certifying that the amendments made exclusively affect the information that has previously been submitted to the CNMV (identifying this document with its registration number and date of entry) and therefore that no other amendments have been made to the prospectuses. The information required under EU Regulation 2019/2088 may be included as a new annex to the prospectus, which will include the information referred to in Articles 6, 7, and, where appropriate, 8 or 9.

Notwithstanding the foregoing, the management companies may send their updated prospectuses directly to the CNMV for registration.

In both cases, to update the prospectus, the management company must use the CIFRADO system to submit a request to include the updated prospectus in the CNMV's records and the full prospectus, including its annexes, which must all be signed electronically.

Finally, any funds or companies that have announced that they have entered into

liquidation, in other words, funds with the words “in liquidation” next to their names in the CNMV register, or companies that have changed their corporate name to also include the words “in liquidation”, in compliance with the provisions of the recast text of the Spanish Corporate Enterprises Act, are not be obliged to update their prospectuses.

6. Can the registration of a CIS that is not initially identified as sustainable be modified to become a product referred to Article 8 or 9 of Regulation 2019/2088 (SFDR)?

CNMV response

It is possible that a CIS that is not initially registered as sustainable could, in time, wish to change into another financial product, such as those referred to in Article 8 of the Regulation, in which case it would have to update its pre-contractual information.

This answer is also applicable to institutions regulated by Law 22/2014.

4. ADVERSE IMPACTS

7. How does the consideration of principal adverse impacts (PAIs) change when sustainability risks are included? What criteria must financial market participants (FMPs) and financial advisers (FAs) follow in order to consider the existence of principal adverse impacts (PAIs)?

CNMV response

While sustainability risk should be understood as any environmental, social or governance event or condition that could have a material negative impact on the value of an investment if it were to materialise, an adverse impact should be understood as a significant negative impact on the environment or society that could occur as a result of investment in a certain economic activity. For example, the management company (investor) could weigh the risk of investing in a company that generates electricity from coal that is registered in a country that will be penalised as of 2025 through a tax on carbon dioxide emissions. However, this risk will not exist if the company is registered in another country which does not expect to apply this tax but the adverse impact on climate change of the investment is the same, regardless of the country in which the company is registered. Therefore, the management company (investor) must declare the adverse impact through the corresponding transparency indicators.

The reference to adverse impacts in Article 4 of Regulation 2019/2088 (SFDR) must be understood in the sense of the negative impact that investment or advisory decisions may have on sustainability factors (environmental or social). Article 4 of the SFDR allows FMPs and FAs to decide whether or not to consider PAIs at institution level, except where FMP has more than 500 employees individually, or on a consolidated basis if the entity is the parent of the group, during the financial year. The assessment of adverse impacts may be carried out using a series of (obligatory and voluntary) indicators.

In the event that the FMP or FA decides not to consider the PAIs on sustainability factors at institution level, they must explain the reasons for doing so on their websites, in addition to an explanation of whether they intend to consider the PAIs in the future, and when they will do so. In the event that the FMP chooses not to consider the PAIs, a statement must be included in the pre-contractual information of each financial product offered stating that the FMP does not consider the PAIs of its investment decisions on sustainability factors and the reasons for this, pursuant to Article 7.2 of the Regulation.

Further, Article 6 of the Regulation establishes the obligation for the FMP and FA to include a description of the integration of sustainability risk in their investment decisions or advice, considering which ESG-type events or conditions, if they were to occur, could cause a current or potential negative impact on the value of the investment. In this sense, the FMP and FA must include in their corresponding pre-contractual information the results of the assessment of the potential negative impact of this risk on the returns of the financial products that are offered or recommended, in the event that this risk is considered in the investment decisions. When it is considered that the sustainability risks are not significant, a clear and concise description of the reasons for this must be included.

8. Can a financial market participant assess the principal adverse impacts only for certain products, such as sustainable financial products registered as products under Article 8 or 9 of Regulation 2019/2088 (SFDR)?

CNMV response

Article 4.1 of Regulation 2019/2088 (SFDR) establishes the obligation for FMPs and FAs to publish and maintain on their websites information on whether or not they consider the PAIs on sustainability factors at institution level, following a criterion of proportionality, i.e. taking into account their size, nature and the scale of their activities, as well as the types of financial products they offer or recommend.

In addition, Article 7 of the Regulation (SFDR) requires FMPs to include a statement in the pre-contractual information for each financial product that indicates whether the adverse effects of investment decisions on sustainability factors are taken into account, or otherwise a reasoned explanation of why they are not. Therefore, this information must be indicated for each product, regardless of whether they are sustainable products pursuant to Article 8 or 9 of the SFRD. In principle, and notwithstanding other criteria being adopted at European level, it is considered that if FMPs take into PAIs into account at institution level, it would be possible for different approaches to be applied for their products.

9. Where should the statement of adverse impacts described in Article 4 of the SFDR be published; in the body of the website or in a specific section? What should the content of the statement be?

CNMV response

In accordance with of Article 4 of Regulation 2019/2088 (SFDR), where FMPs consider principal adverse impacts of investment decisions on sustainability factors, a statement on due diligence policies must be published on their websites, in a separate section entitled "Statement of principal adverse impacts on sustainability." This statement must include as a minimum the information contained in Article 4.2 of the SFRD: a) information about their policies on the identification and prioritisation of principal adverse sustainability impacts and the main indicators in this regard; b) a description of the principal adverse sustainability impacts and of any actions in relation thereto taken or, where relevant, planned; c) brief summaries of engagement policies, if applicable; d) reference to their adherence to responsible business conduct codes and internationally recognised standards for due diligence and reporting and, where relevant, the degree of their alignment with the objectives of the Paris Agreement.

Similarly, in its statement of 18 February 2021, the CNMV encourages institutions to voluntarily use the draft RTS of the Regulation (SFDR), sent by the European Supervisory Authorities (ESAs) to the European Commission and published on 4 February 2021, which include in Annex I a statement template for reference purposes.

Where PAIs are not considered, FMPs must publish this information in a separate section of their websites entitled "Non-consideration of principal adverse impacts", which must provide a clear explanation of why they are not taken into account, indicating, where appropriate, if and when they plan to consider these impacts.

10. Can financial market participants consider the principal adverse impacts (PAIs) of their investment decisions on sustainability factors even if they do not have access to the necessary information?

CNMV response

Article 4.2.a) of the Regulation (SFDR), in relation to the information provided by the FMP where they consider the principal adverse impacts, requires them to report on their policies for the identification and prioritisation of the PAIs and the main indicators in this regard. In addition, Recital 18 of the Regulation establishes that *“where financial market participants, taking due account of their size, the nature and scale of their activities and the types of financial products they make available, consider principal adverse impacts, whether material or likely to be material, of investment decisions on sustainability factors, they should integrate in their processes, including in their due diligence processes, the procedures for considering the principal adverse impacts alongside the relevant financial risks and relevant sustainability risks”*.

Therefore, when FMPs consider PAIs, they should seek access to the necessary information to be able to analyse existing or potential impacts based on the criterion of proportionality. If this is not possible, it should be indicated (presumably information will become increasingly available with the passage of time).

Notwithstanding the foregoing, not having the necessary data to calculate the principal adverse impacts through the corresponding indicators does not necessarily mean that the financial market participant does not take such impacts into account in its investment decisions, checking, insofar as is possible, that the company in which it is invested has the necessary management processes or has adopted certain actions to mitigate the principal adverse impacts.

5. REMUNERATION POLICY

11. **How should managers integrate sustainability risk into their remuneration policies to comply with the information transparency obligations required under Article 5 of the Regulation (SFDR)? In the specific case of management companies, is there any difference in the level of compliance required by CIS management companies and closed-ended collective investment undertakings?**

CNMV response

In the case of open-ended management companies (CISMC), in order to comply with the provisions, under Article 5 of the Regulation (SFDR) and Article 17 of the law governing CISS, they must include information on the integration of sustainability risks in their general remuneration policy document and publish this on their websites. As closed-ended collective investment undertakings are not obliged by their regulations to include information on remuneration on their websites, it will be sufficient to include the integration of sustainability risks in their remuneration policies, in accordance with the SFDR.

12. **Must fund managers that are outside the scope of Chapter II of Law 22/2014 governing venture capital firms comply with the obligations of Article 5 of the Regulation (SFDR) in regard to the integration of sustainability risk in their remuneration policies?**

CNMV response

The SFDR does not exclude any manager regulated by the AIFMD.

6. WEBSITE INFORMATION

13. **What information must financial market participants (FMPs) publish on their websites in relation to the products covered by Articles 8 and 9 of the Regulation (SFDR)?**

CNMV response

According to Article 10 of the Regulation (SFDR), the following information must be published and kept updated on their websites:

- a) a description of the environmental or social characteristics of the sustainable investment objective;
- b) information on the methodologies used to assess, measure and monitor the environmental or social 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 significant sustainability indicators used to measure the environmental or social characteristics or the overall sustainable impact of the financial product;
- c) the pre-contractual information referred to in Articles 8 and 9 of the SFDR;
- d) the periodic reports referred to in Article 11 of the SFDR.

7. PERIODIC REPORTING

- 14. Do the management companies of CIS and closed-ended vehicles have to comply with the obligations of Regulation 2019/2088 (SFDR) in their 2022 annual reports? If so, what information should they report? What content should the periodic information for 2021 have?**

CNMV response

Article 11 of the Regulation (SFDR) establishes that financial market participants must publish, in relation to the products set down in Articles 8 and 9 of the SFDR, the following information in their annual reports for the vehicles managed:

- a) for a financial product as referred to in Article 8, the extent to which environmental or social characteristics are met;
- b) for a financial product as referred to Article 9:
 - the overall sustainability-related impact of the financial product by means of relevant sustainability indicators; or
 - where an index has been designated as a reference benchmark, a comparison between the overall sustainability-related impact of the financial product and the impacts of the designated index and of a broad market index through sustainability indicators.

The Regulation also provides for the development of regulatory technical standards (RTS) to specify the details of the presentation and content of the information and indicates that compliance with this obligation will be enforceable from 1 January 2022.

For the application of these RTS, in relation to periodic public information, the European Supervisory Authorities (ESAs), in the Supervisory Statement published on 12 February 2021, recommended to the European Commission that in the event that after the approval of the RTS, institutions had less than six months to adapt (which seems to be the most probable scenario at present), it should be specified that the RTS would apply from the year beginning on 1 January 2022. Therefore, the annual information for the vehicles related to 2021, which will be prepared in 2022, must comply with the SFDR Regulation based on the general principles of Article 11.1.

8. DELEGATION OF FUNCTIONS

15. **In the event of delegation of management functions to a third entity, which institution is responsible for the obligations of transparency at product level? The delegating institution or the institution to which the function is delegated? What happens in the case of partial delegation?**

CNMV response

Given the lack of a standard criterion at European level, it is considered that the reporting obligations for both collective management and discretionary portfolio management entities, regardless of whether the portfolio is delegated in full or in part, shall fall to the delegating entity, as this entity is responsible for posting on its website, or providing clients with, the pre-contractual and periodic information about the product. This is without prejudice to the fact that the delegating entity may agree with the institution to which the function is delegated on certain clauses to provide it with the necessary information to comply with its disclosure obligations.

9. DISCRETIONARY PORTFOLIO MANAGEMENT (DPM)

16. **When should the periodic reports referred to in Article 11.2 of Regulation 2019/2088 (SFDR) be published in the case of entities that provide portfolio management services?**

CNMV response

Article 11.2 of Regulation 2019/2088 (SFDR) establishes that periodic information on the products referred to in Articles 8 and 9 must be published in the case of entities that provide the portfolio management services in accordance with the periodic reporting regulations established in Article 25.6 of MiFID II. It is considered reasonable, given the lack of any other criterion established at European level, that as a large part of the institutions covered by the scope of the Regulation (SFDR) will publish these reports on an annual basis, portfolio managers should provide the periodic information referred to in Article 11.2 at least once a year, as part of one of the periodic reports sent to their clients, and it will not be necessary to provide this information in all periodic reports published in the year. In addition, the information may be published throughout the year, so it will not be mandatory for it to be disclosed in the first periodic report issued after 1 January 2022, the date of application of the obligation to publish the periodic information stipulated by Article 11 of the SFRD. Thus, it should be remembered that in 2022 the information referred to in Article 11.1 of the SFRD must be published, including, where appropriate, information related to products referred to in Article 8 or 9 of the SFRD that qualify for the purposes of Articles 5 or 6 of the Taxonomy Regulation and have an environmental objective as described in sections a) and b) of Article 9 of said Regulation. Further, in 2023, the information relating to the products referred to in Article 8 or 9 of the SFRD that qualify for the purposes of Article 5 or 6 of the Taxonomy Regulation and have an environmental objective as described in paragraphs c) to f) of Article 9 of said Regulation must be included.

17. How should reporting obligations at the financial product level be applied in the case of portfolio management?

CNMV response

This issue was raised in the letter sent to the European Commission (EC) by the three European Supervisory Authorities (ESAs) on 7 January 2021. Awaiting clarification and notwithstanding the possibility of another criterion being adopted at the European level, it is considered that transparency requirements at the product level generally apply at the managed portfolio level. In the event that model portfolios are used, the information may refer to these.

For the purposes of reporting at product level as described in Article 10 of the Regulation (SFDR), which for the products referred to in Articles 8 and 9 of the Regulation implies the publication of pre-contractual information and periodic information on the entity's website, it is considered reasonable for personalised portfolios (that do not follow model portfolios) to be reported on the basis of a portfolio or portfolios that is/are representative of the entity's management models, and it will not be necessary to publish information on each personalised portfolio at the customer level.

10. FINANCIAL ADVICE

18. Should entities that provide financial advice comply with the transparency obligations of Regulation 2019/2088 (SFDR) if they only advise on financial products that are not covered by Article 2.12 of the Regulation?

CNMV response

In principle, in the absence of any other interpretation that may be made at European level, financial advisers are subject to the reporting obligations set down in Articles 3, 4, 5, 6 and 13 to the extent that their advice refers to the financial products included in Article 2.12, which, in terms of the securities market, encompass AIFs, UCITS and managed portfolios. Thus, if the FAs do not advise on any of these financial products they will not be subject to these reporting obligations.

19. How should the pre-contractual information referred to in Article 6 of the SFDR on the integration of sustainability risks be provided by investment advisers?

CNMV response

Article 6.3 of Regulation 2088/2019 (SFDR) indicates that the pre-contractual information referred to in Article 6 in relation to the integration of sustainability risks must be provided in accordance with Article 24.4 of MiFID II. For these purposes, it is considered that investment advisers must include the information referred to in Article 6.2(a) in the pre-contractual information provided to the client in relation to the advisory service described

in Article 24.4.a) of MIFID II, while the information related to Article 6.2(b) must be included in the information provided in relation to the recommended financial products.

20. Should pre-contractual information be provided to clients who have already received the investment advice?

CNMV response

All reporting obligations for financial advisers (FAs) must be applied from 10 March 2021. Therefore, pre-contractual information referred to in Article 6 of the SFRD on the integration of sustainability risks must be provided to clients who have already received the investment advisory service when a recommendation is made for any of the financial products that are in the scope of the Regulation (SFDR) as of 10 March 2021. However, the information at the entity level referred to in Articles 3, 4 and 5 of the SFRD must be published on the institution's website as of 10 March 2021.