



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 appropriate implementation of the information obligations which are applicable from 10 March 2021, pursuant to Regulation 2019/2088 (SFDR).

## 1. INTRODUCTION

CNMV remains in contact with 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. Such uncertainties derive from the nature of said regulation's novelty, as well as the fact that some issues are pending clarification, and it's likely the European Securities and Market Authority (ESMA) will implement new questions and answers.

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 appropriate.

After the last update of the paper titled "Questions and Answers on sustainability regulations applicable to financial products: Regulation 2019/2088 (SFDR) and Regulation 2020/852 (Taxonomy)" published by CNMV on 12 November 2021, on 6 April 2022 the European Commission authorised the final version of the regulatory technical standards implementing SFDR. Moreover, the European Securities and Markets Authority (ESMA), through its Supervisory Briefing published on 31 May 2022 on sustainability risks and disclosures in the area of investment management, as well as the European Commission, through its Decision of 13 May 2022 on the implementation of the answers to the questions submitted by the European Supervisory Authorities on 10 December 2021, have clarified certain issues and established additional criteria relating to SFDR and the Taxonomy Regulation 2020/852 which CNMV shall take on as its own in order to achieve greater supervisory convergence, which is why the institutions involved must comply with such criteria.

The criteria included in this document may be subject to review as more information becomes available, and new questions may also arise, in which case the review date must be stated.

### Glossary

<b>Regulation (SFDR)</b>	Regulation (EU) 2019/2088 of 27 November 2019 on sustainability-related disclosures in the financial services sector. <a href="https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R2088&amp;from=EN">https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R2088&amp;from=EN</a>
<b>Regulation (Taxonomy)</b>	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. <a href="https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R0852&amp;from=EN">https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R0852&amp;from=EN</a>

<b>RTS of the SFDR (last updated on 19 July 2022)</b>	Final version of the regulatory technical standards which developed SFDR published by the European Commission on 6 April 2022. <a href="#">Sustainability-related disclosure in the financial services sector   European Commission (europa.eu)</a>
<b>Letter to the EC</b>	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. <a href="#">Letter to EU Commission on priority issues relating to SFDR application (europa.eu)</a>
<b>CNMV Statement</b>	Statement on the application of the regulation on sustainability-related disclosures in the financial services sector of 18 February 2021. <a href="https://www.cnmv.es/portal/verDoc.axd?t=%7B177791b4-e6e9-4c05-bbc2-d4550bcddfc4%7D">https://www.cnmv.es/portal/verDoc.axd?t=%7B177791b4-e6e9-4c05-bbc2-d4550bcddfc4%7D</a>
<b>Supervisory Statement</b>	Communication from the European Supervisory Authorities (ESAs), published on 25 February 2021, with recommendations on the application of the Disclosure Regulation. <a href="https://www.esma.europa.eu/file/111856/download?token=mn2J8Alk">https://www.esma.europa.eu/file/111856/download?token=mn2J8Alk</a>
<b>FMP</b>	Financial market participants, as defined in Article 2(1) of the Regulation (SFDR).
<b>FA</b>	Financial adviser, as defined in Article 2(11) of the Regulation (SFDR).
<b>ESAs</b>	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).
<b>Joint Committee</b>	A joint committee that acts as a forum of cross-sector cooperation for the European Supervisory Authorities.
<b>DNSH</b>	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.

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<b>Principal Adverse Impacts (PAIs)</b>	Incidents relating to investment advice and decisions that have negative impacts on sustainability factors.
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<b>TSC</b>	<p>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:</p>
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[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_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-1_en.pdf)

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

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<b>EC Decision (06/07/21) (last updated 12 November 2021)</b>	<p>Commission Decision of 6 July 2021 on the implementation of the answers to questions submitted by the European Supervisory Authorities on 7 January 2021.</p> <p><a href="https://www.esma.europa.eu/sites/default/files/library/sfdr_ec_qa_1323237.pdf">https://www.esma.europa.eu/sites/default/files/library/sfdr_ec_qa_1323237.pdf</a></p> <p><a href="https://www.esma.europa.eu/sites/default/files/library/sfdr_ec_qa_1313978.pdf">https://www.esma.europa.eu/sites/default/files/library/sfdr_ec_qa_1313978.pdf</a></p>
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<b>Supervisory Briefing (last updated 19 July 2022)</b>	<p>Briefing of the European Securities and Market Authority (ESMA) published on 31 May 2022 on sustainability risks and releases related to investment management.</p> <p><a href="https://www.esma.europa.eu/press-news/esma-news/esma-provides-supervisors-guidance-integration-sustainability-risks-and">https://www.esma.europa.eu/press-news/esma-news/esma-provides-supervisors-guidance-integration-sustainability-risks-and</a></p>
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<p><b>EC Decision</b> (13/05/22) (last updated 19 July 2022)</p>	<p>European Commission Decision of 13 May 2022 on the implementation of the answers to questions submitted by the European Supervisory Authorities on 10 December 2021.</p> <p><a href="https://www.esma.europa.eu/databases-library/esma-library?f%5B0%5D=im_esma_sections%3A1295">https://www.esma.europa.eu/databases-library/esma-library?f%5B0%5D=im_esma_sections%3A1295</a></p>
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## 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 SFDR Regulation does not define sustainable economic activities (this is the competence of the Taxonomy Regulation), but sustainable investments. Article 2, paragraph 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, paragraph 17 of this Regulation in accordance with the content, methodologies, and presentation of the sustainability indicators for adverse impacts mentioned in Articles 4, sections 6 and 7 of said 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.

Furthermore, 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? (Last updated on: 19 July 2022)**

**CNMV response:**

The answer to this question is under the section: “Regulation reference: Regulation (EU) 2019/2088 (SFDR)/Topic: sustainable finance disclosures/Article: Article 10, Article 11, section A: “Questions related to Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (SFDR), of the Commission’s Decision of 13 May 2022 regarding the document titled “Questions related to Regulation (EU) 2019/2088 on SFDR” published on 25 May 2022.

- 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? (Last updated on: 19 July 2022)**

**CNMV response:**

In relation to the use of ESG expressions or elements in marketing names, the recommendations stated in paragraph 3.2, numbers 29, 30 and 31 of the Supervisory Briefing published by ESMA on 31 May 2022 shall be followed.

Thus, among other requirements, terms such as "sustainable" and "sustainability" should only be used for the designation of any SFDR Art. 9 (Art. 5 of the Taxonomy Regulation)

and Art. 8 (Art. 6 of the Taxonomy Regulation) funds that have sustainable investments. The use of the term "impact" or "impact investments" should only be applied to funds whose investments are made with the intention of generating positive and measurable social or environmental impact. Other terms such as "ESG", "green", "social", "ethical" or similar terms can only be included if justified and consistent with the characteristics and investment policy of the CIS.

Furthermore, it is not excluded that ESMA may consider the adoption in the future of additional criteria for the use of certain commercial names (such as the establishment of minimum thresholds), with which the institutions concerned will have to comply in due course. Furthermore, the European Commission has already announced that it will propose minimum sustainability criteria, or a combination of criteria for financial products covered by Article 8 of SFDR, to ensure a minimum sustainability performance of such products in order to further strengthen a harmonised application of the Regulation and to incentivise transition efforts.

SFDR Article 8 and 9 investment products already registered at the date of publication of this questions and answers document that are affected by the new criteria set out in ESMA's Supervisory Briefing will have to adapt their names to the Supervisory Briefing by carrying out the necessary updates and registration of documents by 1 January 2023 at the latest.

### **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.

- 4bis. To calculate the percentage of investments that promote environmental or social characteristics (Article 8 SFDR), or that are considered sustainable investments (Article 9 SFDR), if the fund indirectly invests in other CISs classified as a CIS under Article 8 or 9, can it be considered that the direct investment is made in a product subject to Article 8 or 9 SFDR so that such investment can be computed in full for the purpose of estimating such percentage? (Last updated on: 12 November 2021)**

**CNMV response:**

If a CIS invests in other CISs classified under Article 8, and in the absence of regulatory developments or the adoption of a criterion at European level in this respect, in order to determine the percentage of investments that promote environmental or social characteristics, it is considered reasonable to take into account not only the direct investments of the CIS but also indirect investments in other CISs, in the corresponding proportion (according to the percentage invested in such CISs and the percentage that these in turn invest in sustainable assets or assets that promote environmental or social characteristics).

In the event of investing in a CIS under Article 9, Commission Decision of 6 July 2021 on the adoption of the answers to be provided to questions submitted by the European Supervisory Authorities on 7 January 2021, stipulates that such CISs have to invest in underlying assets classified as “sustainable investments”, as defined under Article 2, point 17 of the SFDR Regulation, although investments for certain specific purposes, such as for hedging or liquidity purposes, may be included together with the “sustainable investments” providing that they are in line with the sustainable investment objectives. Therefore, investments by the CIS in CISs classified under Article 9 can be computed in full to calculate sustainable investment percentages.

**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:**

As stated in the CNMV Statement regarding the updating of the prospectuses of investment funds to adapt them to the requirements of articles 6 and 7 of the Regulation (transparency on the integration of sustainability risks and main adverse impacts on sustainability factors respectively), a simplified procedure has been developed for CISMCS to allow for an agile incorporation of the information in the 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 CNMV, which includes the texts that they plan to include to comply with the provisions of the Regulation, identifying the vehicles concerned. 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 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, shall 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 in 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.

**6 bis. Which sustainability-related costs can be allocated to investment funds? Specifically, can the costs of the service of analysing sustainability be allocated? (Last updated on: 19 July 2022)**

**CNMV response:**

Regarding investment funds, pursuant to Article 5.11 of CISR, the only costs that can be allocated are those contained in the prospectus corresponding to services actually provided to the fund that are necessary to carry out its ordinary activity, and which do not entail a cost in addition to that charged by the manager or depository in their respective fees. In this regard, it is considered that the costs of analysing sustainability relating to investment decision-making and securities selection can be allocated, provided this is indicated in the prospectus, and it was initially considered based on meaningful conclusions that are not evident or in the public domain, given that under these requirements they could be considered as costs similar to financial analysis expenses.

Regarding other types of sustainability-related costs, such as the integration of ESG risks, costs stemming from updating prospectuses and periodic reports, or costs incurred from considering PAIs, it is not appropriate to allocate them to the fund, given that, as stated above, they would be costs corresponding to functions carried out by the manager, which are already included in its relevant fee. Among the expenses that can be charged are those derived from the use of sustainability indices, for instance in the case of passive management funds, except when they are part of the name of the fund, which, if applicable, will be borne by the fund manager.

## **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.

Furthermore, 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, section 1 of Regulation 2019/2088 (SFDR) establishes the obligation for FMPs and FAs to publish and maintain on their website's 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 SFDR. 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, section 2 of the SFDR: 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 CISMCS and closed-ended CISMCS?**

**CNMV response:**

In the case of open-ended management companies (CISMCS), 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 CIS management companies 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 management companies of CIS and closed-ended vehicles have to comply with the obligations of Regulation 2019/2088 (SFDR) in their annual reports prepared as of 1 January 2022? If so, what information should they report? What is the reference period and in what document should it be included? (Last updated on: 12 November 2021)

**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.

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 of said Regulation, the reference period being from the entry into force of the Regulation, on 10 March 2021 to 31 December 2021. For the purposes of complying with these general principles, the latest version of the draft implementing RTS of SFDR (level 2) can be used as a reference.

With regard to the place where the information must be included, both CISs, venture capital firms and other closed-ended vehicles must include this information in the management report of the annual accounts.

## 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 according to 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 SFDR. Thus, it should be remembered that in 2022 the information referred to in Article 11(1) of the SFDR must be published, including, where appropriate, information related to products referred to in Article 8 or 9 of the SFDR that qualify for the purposes of Articles 5 or 6 of the Taxonomy Regulation and have an environmental objective as described in Article 9(a) and (b) of said Regulation. Furthermore, in 2023, the information relating to the products referred to in Article 8 or 9 of the SFDR that qualify for the purposes of Article 5 or 6 of the Taxonomy Regulation and have an environmental objective as described in Article 9(c) to (f) of said Regulation must be included.

**17. How should information obligations at the financial product level be applied in the case of portfolio management? (Last updated on: 12 November 2021)**

**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. In its reply, the EC states that: (i) the SFDR does not establish any distinction on whether the portfolios are personalised or not; (ii) in the case of the transparency obligations under Article 10 SFDR, it is necessary to enforce compliance with EU and national data protection legislation, and where appropriate, ensure due client confidentiality; and (iii) when financial market participants use standardised products, website transparency obligations under SFDR can be fulfilled by providing information on the standardised products.

Therefore, the information requirements 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, are applicable, in general, at managed portfolio level. In the case of personalised portfolios (that do not follow model portfolios), it is considered reasonable that the information be provided 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? (last updated on 19 July 2022)**

**CNMV response:**

The answer to this question is under the section "Regulation reference: Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services Topic: sustainable finance disclosures Article: Article 2(11)(c) and (d), Article 3(2), Article 4(5)(b), Article 5, Article 6(2), first subparagraph, point (a), Article 6(2), second subparagraph, Article 12(2), Article 13(1), Article 14(1) of section A: "Questions related to Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (SFDR), of the Commission's Decision

of 13 May 2022 regarding the document titled “Questions related to Regulation (EU) 2019/2088 on SFDR” published on 25 May 2022.

**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.

**6. Should pre-contractual information be provided to clients who have already received the investment advice? (last updated on 19 July 2022)**

**CNMV response:**

All information obligations for financial advisers (FAs) must be applied from 10 March 2021. Therefore, pre-contractual information referred to in Article 6.2 of the SFDR on the integration of sustainability risks must be provided to clients who have already received the investment advisory service when a recommendation is made as of 10 March 2021. However, the information at the entity level referred to in Articles 3.2, 4.5 and 5 of the SFDR must be published on the institution's website as of 10 March 2021.

## **11 INCORPORATING THE SUSTAINABILITY RISK**

**21. What is the deadline for the integration of sustainability risk by managers of collective investment vehicles and what are the implications? And the deadline to adapt pre-contractual information to reflect the integration of sustainability risk? (last updated on 19 July 2022)**

**CNMV response:**

Delegated Regulation 2021/1255 amending EU Delegated Regulation 231/2013 (AIFMD level II) in regards to sustainability risks and factors to be taken into account by AIF managers will apply from 2 August 2022, and EU Delegated Directive 2021/1270 amending Directive 2010/43/EU (UCITS level II) must also be transposed to apply from the same date. In the absence of timely transposition, it is understood that the direct effect that European Directives may have in certain cases may be invoked in accordance with the case law of the Court of Justice of the European Union (CJEU).

In line with the previous regulations, all fund managers, including those that do not offer vehicles under Article 8 or 9 of SFDR, must integrate, in addition to financial risks, sustainability risk in their investment decision-making policies and procedures, due diligence, risk management policies and procedures, as well as in the overall governance structure, and must have staff with the necessary capacity and expertise to analyse and manage such risks.

To this end, managers are reminded of their duty to take appropriate measures to adapt in a timely manner to the requirements of the above-mentioned regulations. It also shows that the integration of sustainability risk by asset managers is one of the aspects covered by the Supervisory Briefing published by ESMA on 31 May 2022.

Lastly, investment products already registered on 2 August will have to update the content of their pre-contractual information in 2022 to the obligations established in the regulation regarding the integration of sustainability risks, in the next corresponding update, and in any case no later than 1 January 2023.