

SFDR in France, Germany and Luxembourg: a comparison

by Dechert (Cyril Fiat, Angelo Lercara and Arne Bolch) and Practical Law Global

Practice notes | Law stated as at 03-Mar-2021 | France, Germany, Luxembourg

This PDF is an excerpt from a multi-jurisdictional table showing the steps that various EU member states (France, Germany, Ireland, Italy, Luxembourg, the Netherlands and Spain) have taken in relation to Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (SFDR or Disclosure Regulation). See [here](#) for the full table.

Scope of this note

Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (SFDR or Disclosure Regulation) imposes harmonised transparency and disclosure requirements relating to sustainability on financial market participants (FMPs) and financial advisers from 10 March 2021.

It forms a key part of the European Commission's reforms relating to sustainable finance, which is the process of taking environmental, social and governance (ESG) considerations into account in investment decision-making, ultimately leading to more sustainable investments and a greener economy. The aim of the reforms is to integrate ESG considerations into the investment and advisory process in a consistent manner across financial sectors.

For more information about the SFDR, see *Practice note, Sustainable finance: SFDR: overview*. For an overview of European sustainable finance initiatives, including *Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment* (Taxonomy Regulation), see *Practice note, Hot topics: EU sustainable finance regulation*.

Comparative table

The table below sets out the national measures that various EU member states have taken in relation to the SFDR. The SFDR is directly applicable (as a Regulation), but it is open to member states to provide guidance and local changes relating to the legislation.

Any reference to implementation of the Regulation means, in this context, the steps taken by member states to ensure the compatibility of national laws and regulations with the SFDR. The SFDR entered into force on 29 December 2019 and most of its substantive provisions apply from 10 March 2021.

Subscribers viewing the table on-screen may find it useful to collapse the table of contents panel by clicking on the double left chevron icon (<<). This will expand the columns of the table. Alternatively, this document can be downloaded or printed for better rendering.

France

Will the SFDR be implemented by 10 March 2021?	Is compliance with the SFDR expected by 10 March 2021?	Has any local guidance been provided on the SFDR?	Will implementation see any gold plating or other divergence?	Are there any legal or industry concerns relating to the SFDR?	Will there be a fast-track process for SFDR updating?
Yes.	Yes.	<p>Yes.</p> <p>See AMF: Overview of the main provisions of the draft RTS currently undergoing consultation related to the Disclosure Regulation, which provides information about how the AMF will apply the SFDR.</p>	<p>The AMF Doctrine 2020-03 is often seen by the industry as a type of gold plating, as it affects foreign UCITS authorised for marketing in France (see AMF: Doctrine DOC-2020-03, AMF: Press Release, AMF publishes a first policy on investor information and AMF: update to policy on collective investments incorporating non-financial criteria).</p> <p>The Doctrine aims to ensure:</p> <ul style="list-style-type: none"> -The quality of information provided to investors, by defining minimum standards (which mainly apply to investment strategies) related to extra financial criteria. -The consistency of information provided with the reality of the ESG approach implemented. <p>It specifies, depending on the</p>	<p>Yes.</p> <p>At the French level, the main concerns relate to the relationship between the SFDR, the requirements set out in article 29 of the Energy-Climate Act and the AMF Doctrine 2020-03, and how these regulations can be combined.</p>	<p>Yes.</p> <p>See AMF: Instruction DOC-2011-19 (no English version available), which provides that the sole inclusion of extra financial criteria in the management of UCITS (or approved AIFs) no longer requires prior approval of the AMF, but only the ex-post particular (or specific) information of the unitholders, unless the risk profile has changed, and on transmission to the AMF of Appendix XIX. See also AMF: Doctrine 2020-03 and AMF: Appendix XIX (no English version available).</p> <p>The AMF has confirmed the above with respect to managers modifying their pre-contractual documents in accordance with the general principles defined by the SFDR (that is, without AMF</p>

		<p>nature of information disclosed in fund's regulatory documents (KIID and prospectus) and marketing materials, what minimum ESG standards apply in relation to the investment strategy.</p> <p>The AMF is expected to update the Doctrine again in the coming weeks in the light of the outcome of the work on SFDR delegated legislation.</p> <p>In addition, article 29 of the Energy-Climate Act (in force from 10 March 2021), provides further requirements for French regulated portfolio management companies. The Act is viewed as a significant step towards greater transparency in ESG reporting and better integration of non-financial issues in investment decision-making and risk management processes. See DG Trésor: Consultation on the decree concerning article 29 of Energy-Climate</p>	<p>approval). See AMF: Implementation of the SFDR regulation for asset management companies as of March 10, 2021.</p>
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			Act, 4 February 2021 (in French).*		
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* The Act has been passed in parallel with the SFDR. Information covered includes:

- Management companies can communicate their climate risk strategy for aligning with the Paris Agreement and set out a forward-looking quantitative target.
- Investors can communicate their strategy for aligning with the objectives of international agreements that result from biodiversity COPs.

Germany

Will the SFDR be implemented by 10 March 2021?	Is compliance with the SFDR expected by 10 March 2021?	Has any local guidance been provided on the SFDR?	Will implementation see any gold plating or other divergence?	Are there any legal or industry concerns relating to the SFDR?	Will there be a fast-track process for SFDR updating?
Yes.	The Federal Financial Supervisory Authority (BaFin) stated that it expects companies to use 2021 to prepare their reporting processes as best as possible for the entry into force of the delegated acts. In doing so, companies should, in accordance with Commission guidance, be guided by drafts made available by the ESAs.	Yes. See BaFin: Offen nachhaltig, 15 February 2021 (only available in German) and BaFin: Guidance Notice on Dealing with Sustainability Risks .	There is no gold plating in terms of the substance of the rules. There is a proposal, in a draft act which amends the German investment code and other acts, that the duty to comply with the disclosure requirements under the SFDR and the Taxonomy Regulation will be covered within regular audits of German AIFMs and UCITS management companies.	Major concerns relate to uncertainties around the application of the SFDR, lack of data and missing alignment between MIFID II, the Taxonomy Regulation and the SFDR.	No.

Luxembourg

Will the SFDR be implemented by 10 March 2021?	Is compliance with the SFDR expected by 10 March 2021?	Has any local guidance been provided on the SFDR?	Will implementation see any gold plating or other divergence?	Are there any legal or industry concerns relating to the SFDR?	Will there be a fast-track process for SFDR updating?
Yes.	Yes.	<p>Yes, although the local guidance only refers to timing and not to process.</p> <p>For general timing, see CSSF: Communiqué dated 6 November 2020.</p> <p>For the fast-track procedure, see CSSF: Communiqué dated 16 December 2020.</p>	<p>There is no gold plating in terms of the substance of the rules.</p> <p>For UCITS and other Luxembourg funds under the law of 17 December 2010, there is a possibility to reduce the subscription tax (<i>taxe d'abonnement</i>) from 0.05% to up to 0.01% (for retail investor classes) to the extent the relevant fund or sub-fund in question invests in assets, which represent activities qualifying as environmentally sustainable economic activities (<i>article 3, Taxonomy Regulation</i>) a rule introduced by the Luxembourg law of 19 December 2020 concerning the budget of the Luxembourg state for 2021.</p>	<p>Major concerns relate to uncertainties around the application of the SFDR, lack of data, and missing alignment between MiFID II, the Taxonomy Regulation and the SFDR.</p>	<p>Yes. The fast-track procedure ended on 28 February 2021. See CSSF: Communiqué dated 16 December 2020.</p>

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