

# Investment Management Alert

If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.

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## European Commission Consults on Changes to the SFDR Regime

The European Commission recently launched two consultations — a public consultation and a targeted consultation (collectively, the Consultations) — seeking stakeholders’ feedback on potential changes to the Sustainable Finance Disclosure Regulation (SFDR) regime. This regime was designed to bring transparency to investors regarding the sustainability risks that may affect their investments and the adverse impacts such investments may have on the environment and society.

One way of achieving this aim is to require financial market participants to make sustainability-related disclosures to investors, with these disclosures being applied at Level 1 since March 2021 and at Level 2 since January 2023. For details about the Level 1 and Level 2 application of the SFDR, please refer to previous Skadden client alerts, “Private Fund Managers Should Prepare for New ESG-Related Regulatory Obligations” (September 20, 2020) and “Final SFDR Regulatory Technical Standards Provide Private Fund Managers With Clarity, but Add Obligations” (May 3, 2022).

The questions in the Consultations, which were launched on 14 September 2023, are broad and provide an opportunity for stakeholders to raise concerns regarding the concepts that the SFDR covers and how the regime operates in practice. The key topics explored by the European Commission indicate an awareness of practical issues encountered by market participants seeking to comply with the requirements of the SFDR — for instance, questions regarding issues with data-gathering for required disclosures.

Arguably, the overall breadth, extensiveness and depth of all questions in the Consultations signal willingness on the European Commission’s part to explore regulatory reform. However, the format of the questionnaires in the Consultations provides limited room for commentary from stakeholders outside of the specific questions raised, simply soliciting “agree” or “disagree” responses on a scale from 1 to 5 for the majority of questions.

In addition, the Consultations were accompanied by a series of online workshops on 10 October 2023, which focused on current challenges of the SFDR and the possible pathways for enhancing sustainability disclosures in the EU, including discussion about a new set of the SFDR product categories. [A video recording of the workshops is available.](#)

The deadline for responding to each of the Consultations is **15 December 2023**.

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Below is a high-level summary of the Consultations, highlighting some key questions for asset managers and professional investors, along with the timeline for feedback.

## Snapshot Summary

	Targeted Consultation	Public Consultation
<b>Audience</b>	Financial market participants, investors, nongovernmental organisations (NGOs), relevant public authorities, national regulators and other stakeholders that are more familiar with the SFDR and the EU's sustainable finance framework or who have more in-depth knowledge or working experience in the field of sustainable finance disclosures.	A broad range of stakeholders, including individuals and organisations (e.g. interest groups, member associations and representative bodies) that have more general knowledge of the SFDR.
<b>Key Sections</b>	<ol style="list-style-type: none"> <li>1. Current SFDR requirements.</li> <li>2. Interaction and alignment with other sustainable finance legislations.</li> <li>3. Potential changes to the disclosures requirements.</li> <li>4. Potential establishment of a categorisation system for financial products.</li> </ol>	<ol style="list-style-type: none"> <li>1. Current SFDR requirements.</li> <li>2. Interaction and alignment with other sustainable finance legislations.</li> </ol>
<b>Deadline</b>	15 December 2023.	15 December 2023.
<b>How to Provide Feedback</b>	Complete the online questionnaire through this <a href="#">EU Survey link</a> .	Complete the online questionnaire through this <a href="#">EU Login link</a> .

## Key Questions

**Section 1** of the Consultations seeks feedback on the current requirements of the SFDR, including:

- The positive impacts and issues of the SFDR.
- The cost implications of required disclosures.
- Whether the SFDR is meeting both its broader and specific aims.

The Consultations include questions concerning the usefulness and practicality of the principal adverse impacts (PAIs) and whether an alternative approach to PAIs should be taken. These questions provide an open-ended response box allowing respondents to elaborate on any methodological or practical challenges encountered during the preparation of the PAIs' disclosures.

**Section 2** of the Consultations seeks feedback on the interaction and alignment with other European sustainable finance legislation, including the:

- EU Taxonomy Regulation.
- Corporate Sustainability Reporting Directive.

- EU Climate Transition Benchmarks Regulation.
- EU Paris-Aligned Benchmarks.

The Consultations also include questions regarding the usefulness of the product disclosures required under the SFDR to distributors when determining whether products fit investors' sustainability preferences under Markets in Financial Instruments Directive (MiFID II) and the Insurance Distribution Directive. These questions signal the European Commission's focus on ensuring that sustainability-related legislation is harmonised with the broader financial regulatory framework.

**Section 3** of the targeted consultation seeks feedback on the effectiveness and potential revisions to both entity- and product-level disclosures. Specifically, at the product level, the European Commission is inquiring whether it would be more suitable to impose uniform disclosure requirements for all products, regardless of their sustainability claims, or if such requirements should apply only to certain products.

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In either scenario, the targeted consultation invites suggestions on what should be included as mandatory disclosures. The European Commission also seeks input on the three existing types of disclosures — precontractual, periodic and website disclosures — and their appropriateness, the feasibility of prescriptive formats and any concerns related to public accessibility, cost efficiency and other relevant aspects.

**Section 4** of the targeted consultation seeks feedback on the widely debated categorisation system for Article 6, 8 and 9 products. The European Commission appears to be gauging industry views on the necessity and benefits of implementing such a categorisation system in order to minimise risks to investors and combat greenwashing.

The targeted consultation has two proposals:

- Splitting the categories on a different basis than is currently proscribed in Articles 8 and 9 (for example, the investment strategy promising a positive contribution to certain sustainability objectives).
- Formalising the existing Articles 8 and 9 criteria into formal product categories.

While the final paper is yet to be released (it is expected before the end of 2023), it is worth noting that the UK's Financial Conduct Authority proposed in its [October 2022 consultation paper CP22/20](#) to adopt three categories of sustainable product labels: sustainable focus, sustainable improvers and sustainable impact. How the SFDR's new categorisation responds to and aligns with the UK's product labels will be another area to monitor.