

## EU ESG Disclosure Regulation and EU Taxonomy Regulation: How will they affect you and what do you need to do now?

### Link:

<https://www.iema.net/resources/event-reports/2020/08/18/eu-esg-disclosure-regulation-and-eu-taxonomy-regulation-how-will-they-affect-you-and-what-do-you-need-to-do-now>

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Question Asked	Answer Given
Do you think ESG disclosure will tie in with non financial disclosure and TCFD?	There is a consultation running at the moment examining whether TCFD should form part of the Non-Financial Reporting Directive disclosures of corporates. We will be keeping an eye on the outcome of this consultation very closely.
To what extent do you think that these regulations will be applicable for UK business- how much confidence can we have that our own legislation/policies will be aligned?	The SF Disclosure Regulation (Level 1) has already entered into force (though will only apply from March 2021) and will form part of the "acquis" which become part of UK law once the Implementation Period ends. The RTS however (which constitutes a delegated act under the SF Disclosure Regulation) will enter into force after the end of the Implementation Period. Similarly, correspondence between the Treasury and the House of Commons indicates that the UK will retain the Taxonomy framework but that the

	<p>disclosure requirements contained in the Taxonomy Regulation will not form part of retained EU law.</p>
<p>The EU had a discussion about whether a brown taxonomy should be considered also. Have you been monitoring this and if so what have been the conclusions please?</p>	<p>The Taxonomy Regulation includes a requirement for the Commission, by 31 December 2021, to publish a report describing the provisions that would be required to extend the scope of the Regulation to cover economic activities that significantly harm environmental sustainability (i.e. a so-called "significant harm taxonomy"). The rationale for and benefits of such a "significant harm taxonomy" are recognised in the TEG's final report on the Taxonomy (published March 2020), and we understand that the new Platform on Sustainable Finance will start work on this (though this does not necessarily mean that such "significant harm taxonomy" will be enshrined in law at the end of the process). We understand that consultations are taking place on the scope of this taxonomy.</p>
<p>How deep do these requirements delve into the supply chains of corporates?</p>	<p>The Taxonomy Regulation guidance refers to the importance of looking at Responsible Business Conduct in the supply chain together with investee companies in relation to human rights impacts and the SF Disclosure Regulation refers to the same guidance in its recitals. We await more detailed guidance on the point but these references would indicate that supply chain diligence will be relevant.</p>

<p>Thank you for an excellent presentation. Could you please comment on the expected updates /developments to fiduciary duties of directors in the context of ESG ? How can Corporate Governance become a driver of sustainable growth under the EU Green Deal?</p>	<p>There have been no developments in the case law on fiduciary duties of directors in recent years with respect to ESG factors. Nevertheless it would be prudent to build in effective consideration of ESG risks and opportunities when making decisions in the context of discharging directors' duties. As the EU Green Deal crystallises at the policy level, corporate governance within organisations may be used to formulate new views on how to integrate ESG more into risk management but also investment decisions.</p>
<p>When will Article 9-compliant funds be available in the market?</p>	<p>Article 9 of the SF Disclosure Regulation comes into force from 10 March 2021. From that date on, any fund that has "sustainable investment" as its objective (as defined in point (17) of Article 2 of the Regulation) will qualify as an Article 9 fund.</p> <p>Furthermore, we are advising asset managers on the establishment of Taxonomy Regulation-compliant fund products which qualify as article 9 funds, so there are asset managers who are keen to provide their investors with article 9 funds.</p>
<p>Most people on this call are unlikely to know what MIFID-II and AIFMD etc mean. please explain further.</p>	<p>MiFID II is the Markets in Financial Instruments Directive, which came into force on 3 January 2018, and regulates a wide range of financial market activities in the EU, including</p>

	<p>portfolio management and investment advice. MiFID II firms providing portfolio management are in scope of the SF Disclosure Regulation as "financial market participants" and MiFID II firms providing investment advice are in scope as "financial advisers".</p> <p>AIFMD is the Alternative Investment Fund Managers Directive, which came into force on 22 July 2011, and regulates managers of funds that are not UCITS funds (UCITS funds are highly regulated open-ended funds which can be made available to retail investors). Alternative investment fund managers (i.e. AIFMs) are in scope of the SF Disclosure Regulation as "financial market participants".</p>
<p>What exactly do the double sided arrows mean in slide 5 ("SF Disclosure Regulation Overview")?</p>	<p>This was a stylistic choice and does not have a specific meaning. We will remove from future presentations to avoid any confusion.</p>