Impact van duurzaamheidsregelgeving

Product governance

Product governance

Nieuw artikel 5 – **De doelmarkt**

1. The product approval process shall for each insurance product identify the target market and the group of compatible customers. The target market shall be identified at a sufficiently granular level, taking into account the characteristics, risk profile, complexity and nature of the insurance product, as well as its sustainability factors as defined in Article 2, point (24) of SFDR.

2. Manufacturers may, in particular with regard to insurance-based investment products, identify groups of customers for whose needs, characteristics and objectives the insurance product is generally not compatible, except where insurance products consider sustainability factors as referred to in paragraph 1.

3. Manufacturers shall only design and market insurance products that are compatible with the needs, characteristics and objectives, including any sustainability-related objectives, of the customers belonging to the target market. When assessing whether an insurance product is compatible with a target market, manufacturers shall take into account the level of information available to the customers belonging to that target market and their financial literacy.

4. Manufacturers shall ensure that **staff involved** in designing and manufacturing insurance products has the necessary skills, knowledge and expertise to properly understand the insurance products sold and the interests, objectives, including any sustainability-related objectives, and characteristics of the customers belonging to the target market.

Wijziging van gedelegeerde verordening (EU) 2017/2358 (21 april 2021)

Product governance

Nieuw artikel 6 – **Producttests**

1. Manufacturers shall test their insurance products appropriately, including scenario analyses where relevant, before bringing that product to the market or significantly adapting it, or in case the target market has significantly changed. That product testing shall assess whether the insurance product over its lifetime meets the identified needs, objectives, including any sustainability-related objectives, and characteristics of the customers belonging to the target market. Manufacturers shall test their insurance products in a qualitative manner and, depending on the type and nature of the insurance product and the related risk of detriment to customers, quantitative manner.

2. Manufacturers shall **not bring insurance products** to the market if the results of the product testing show that the products do not meet the identified needs, objectives, including any sustainability-related objectives, and characteristics of the target market.

Wijziging van gedelegeerde verordening (EU) 2017/2358 (21 april 2021)

Product governance

Wijziging artikel 7 lid 1 – **Productmonitoring en –evaluatie**

1. Manufacturers shall continuously monitor and regularly review insurance products they have brought to the market, to identify events that could materially affect the main features, the risk coverage or the guarantees of those products. They shall assess whether the insurance products remain consistent with the needs, characteristics and objectives, including any sustainability-related objectives, of the identified target market and whether those products are **distributed…….** including any sustainability-related objectives, of the identified target market and whether those products are distributed to the target market or are reaching customers outside the target market.

Wijziging artikel 8 lid 3 – **Distributeurs informeren (positionering en relatie)**

3. The information referred to in paragraph 2 shall enable the insurance distributors to:
   (a) understand the insurance products;
   (b) comprehend the identified target market for the insurance products;
   (c) identify any customers for whom the insurance product is not compatible with their needs, characteristics and objectives, including any sustainability related objectives;
   (d) carry out distribution activities for the relevant insurance products in accordance with the best interests of their customers as prescribed in Article 17(1) of Directive (EU) 2016/97.

Product governance

Wijziging artikel 10 lid 2 –**productdistributie arrangementen**

2. The product distribution arrangements shall:
   (a) aim to prevent and mitigate customer detriment;
   (b) support a proper management of conflicts of interest;
   (c) ensure that the objectives, interests and characteristics of customers, including any sustainability-related objectives, are duly taken into account.

Distributeurs IDD

Wijziging artikel 11 – **Waarschuwen en aanpassen distributiestrategie**

> Insurance distributors becoming aware that an insurance product is not in line with the interests, objectives and characteristics of the customers belonging to its identified target market, including any sustainability-related objectives, or becoming aware of other product-related circumstances that may adversely affect the customer, shall promptly inform the manufacturer and, where appropriate, amend their distribution strategy for that insurance product.

Wijziging van gedelegeerde verordening (EU) 2017/2358 (21 april 2021)

Distribiteurs IDD

Zorgplicht verzekeringsadviseur

Paragraph 6 is replaced by the following:

When providing advice on an insurance-based investment product in accordance with Article 30(1) of Directive (EU) 2016/97, an insurance intermediary or insurance undertaking **shall not make a recommendation** where none of the products are suitable for the customer or potential customer.

An insurance intermediary or insurance undertaking shall not recommend insurance-based investment products as meeting a customer's or potential customer's sustainability preferences where those insurance-based investment products do not meet those preferences. The insurance intermediary or insurance undertaking shall explain to the customers or potential customers the reasons for not doing so and keep records of those reasons.

Where no insurance-based investment product meets the sustainability preferences of the customer or potential customer, and the customer decides to adapt his or her sustainability preferences, the insurance intermediary or insurance undertaking **shall keep records of the decision of the customer,** including the reasons for that decision"

Wijziging artikel 9 van gedelegeerde verordening (EU) 2017/2359 (21 april 2021)

Informatievoorziening SFDR

Productcategorieën

‘**Grijze producten**’

Een product is grijs indien er bij een product **geen** rekening wordt gehouden met duurzaamheidsrisico’s.

- Artikel 6 SFDR

‘**Licht groene producten**’

Producten die E/S kenmerken **promoten**

- Artikel 8 SFDR
- Artikelen 13-19 RTS

‘**Donker groene producten**’

Producten die een **duurzame belegging als doelstelling** hebben

- Artikel 9 SFDR
- Artikelen 20-30 RTS

Het begrip 'promoten'

Artikel 8 Transparantie van het promoten van ecologische of sociale kenmerken in precontractuele informatieverschaffing

1. Wanneer een financieel product onder andere **ecologische of sociale kenmerken of een combinatie van die kenmerken** promoot, op voorwaarde dat de ondernemingen waarin is belegd praktijken op het gebied van goed bestuur volgen, omvat de krachtens artikel 6 leden 1 en 3, te verschaffen informatie het volgende:

   a) informatie over de wijze waarop aan die **kenmerken** wordt voldaan;
   b) indien er een **index als referentiebenchmark** is aangewezen, informatie over de vraag of en hoe deze index consistent is met die kenmerken.

De SFDR **geeft geen uitsluitsel omtrent het begrip promoten**. De ESAs hebben met consultatie papers en de finale RTS handvatten gegeven voor de interpretatie. Echter hebben ook de ESAs de Europese Commissie verzocht om **urgente opheldering van de SFDR** op een aantal vlakken, een reactie wordt afgewacht (waaronder het begrip promoten).

SFDR & Promoten

Kan een product wel **'automatisch' kwalificeren als een artikel 8 product**, zonder dat een (minimale) **actieve handeling** vanuit de financieel marktparticipant in de informatieverstrekking aan klanten is vereist.

Echter, de interpretatie van de ESAs en het uitblijven van een reactie van de EC houdt de **mogelijkheid van passief promoten open**. Hier kan sprake van zijn indien:

1. De **productnaam** duurzame elementen bevat;
2. Het product **intrinsieke karakteristieken**, zoals een exclusie strategie, bevat die niet actief wordt gepromoot; of,
3. Het product niet expliciet E/S karakteristieken promoot, maar wel refereert naar ***sustainability factors*** in de zin van de SFDR.

Het begrip 'promoten'

ESA Ref: Priority issues relating to SFDR application, d.d. 7 januari 2021.

More specifically, the following questions arise:

- Can the name of a product, which may include words like "sustainable", "sustainability", or "ESG" be considered to qualify a product to be promoting an environmental or social characteristic or to be having sustainable investment as its objective?

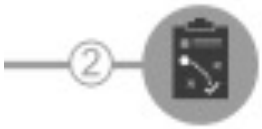
- While a financial product to which Article 8 applies does not need to explicitly promote itself as targeting sustainable investments (within the meaning of Article 2(17) SFDR), would a reference to taking into account a sustainability factor or sustainability risk in the investment decision be sufficient for Article 8 to apply? If the answer is yes, how can financial market participants that disclose mandatory information according to Article 6(1) or Article 7(1) SFDR ensure that this is not automatically considered as "promoting environmental or social characteristics".

- Must a product to which Article 8 applies invest a minimum share of its investments to attain its designated environmental or social characteristic in order to be considered to be promoting environmental or social characteristics?

- In the absence of active advertising of an environmental or social characteristic of the product, would an intrinsic characteristic of the product, such as a sectoral exclusion (e.g. tobacco) which is not advertised, also qualify as "promotion"?

- In addition, would complying with a national legal obligation, which applies to the financial market participant, such as a ban on investment in cluster munitions, also bring the product into the scope of Article 8?

Cat. 8 - Informatieverplichtingen



What investment strategy does this financial product follow?

Investment strategies guide investment decisions based on factors such as investment objectives and risk tolerance.

- *What are the binding elements of the investment strategy used to select the investments to attain each of the environmental or social characteristics promoted by this financial product?*
- *How is that strategy implemented in the investment process on a continuous basis?*
- *What is the committed minimum rate to reduce the scope of the investments considered prior to the application of that investment strategy? [include question where there is a commitment to reduce the scope of investments by a minimum rate]*
- *What is the policy to assess good governance practices of the investee companies?*
- *Where can I find further details on the investment strategy?*

Good governance practices include sound management structures, employee relations, remuneration of staff and tax compliance.



What is the asset allocation planned for this financial product?

Het begrip ‘promoten’

ESA Joint Consultation Paper ESG Disclosures, d.d. 23 april 2020

The scope of the category of products with environmental and social characteristics (Article 8) was **intentionally drafted as a catch-all category** to cover **all financial products** with different environmental or social ambitions that do not qualify as sustainable investments according to Article 9 SFDR.

ESA Final Report on draft RTS SFDR, d.d. 2 februari 2021

- **Rec. 19:** Promoten kan via het meewegen van de Principal Adverse Impact van investeringskeuzes.
- **Rec. 22**: Promoten kan in (i) precontractuele of periodieke documentatie, (ii) productnaam of (iii) andere **marketing communicatie** omtrent de investeringsstrategie, financieel product standaard, toegepaste labels of toepasbare regels omtrent ‘automatic enrolment’.
- **Rec. 25**: Promoten kan via exclusie strategieën, en transparantie dient gegeven te worden bij elke bijdrage aan E/S kenmerken via exclusie.

Principal Adverse Impact Disclosure
Adverse Sustainability Statement

Adverse Impact Statement

Artikel 4 SFDR: Adverse Impact Statement

Een **(i) verzekeringsonderneming** en **(ii) verzekeringsadviseur** dient een statement te maken **op hun website over ongunstige effecten van beleggingsbeslissingen**:

Artikel 4

Transparantie van ongunstige effecten op de duurzaamheid op entiteitsniveau

1. Financiëlemarktdeelnemers publiceren en handhaven op hun website:

a) indien zij de belangrijkste ongunstige effecten van beleggingsbeslissingen op duurzaamheidsfactoren in aanmerking nemen, een verklaring over het "due diligence" beleid met betrekking tot die effecten, waarbij terdege rekening wordt gehouden met de omvang, de aard en de schaal van hun activiteiten en de soorten financiële producten die zij beschikbaar stellen;

b) indien zij ongunstige effecten van beleggingsbeslissingen op duurzaamheidsfactoren niet in aanmerking nemen, duidelijke redenen daarvoor, met inbegrip van, indien relevant, informatie over de vraag of en wanneer zij voornemens zijn die ongunstige effecten wel in aanmerking te nemen.

5. Financieel adviseurs publiceren en handhaven op hun website:

a) informatie over de vraag of zij, terdege rekening houdend met de omvang, de aard en de schaal van hun activiteiten en de soorten financiële producten waarover zij advies verstrekken, in hun beleggings- of verzekeringsadvies de belangrijkste ongunstige effecten op duurzaamheidsfactoren in aanmerking nemen; of

b) informatie over de vraag waarom zij in hun beleggings- of verzekeringsadvies ongunstige effecten van beleggingsbeslissingen op duurzaamheidsfactoren niet in aanmerking nemen en, indien relevant, informatie over de vraag of en wanneer zij voornemens zijn die ongunstige effecten wel in aanmerking te nemen.

Adverse Impact Statement

Artikel 4 SFDR: Adverse Impact Statement

No Consideration

Indien deze ongunstige effecten niet worden meegenomen kan worden volstaan met een **Statement of No Consideration**

"… does not consider the adverse impacts of its investment decisions.."

Met een Statement of No Consideration **vervallen de overige informatieverplichtingen niet (alleen art. 4 dus),** waaronder:

1. Beloningsbeleid (art. 5 SFDR)
2. Precontractuele informatie (art. 6 SFDR)
3. Website (art. 10 SFDR)

Principal adverse impact statement

HART advocaten

Table 1

Principal adverse sustainability impacts statement

Financial market participant [*Name and, where available, LEI*]
Summary [*Name and, where available, LEI*] considers principal adverse impacts of its investment decisions on sustainability factors. The present statement is the consolidated principal adverse sustainability impacts statement of [*name of the financial market participant*] [*where applicable, insert "and its subsidiaries, namely [list the subsidiaries included]"*]. This principal adverse impacts statement covers the reference period from [*insert "1 January" or the date on which principal adverse impacts were first considered*] to 31 December [*year n*]. [*Summary referred to in Article 5 provided in the languages referred to in paragraph 2 thereof*]
Description of principal adverse sustainability impacts [*Information referred to in Article 6 in the format set out below*]

Indicators applicable to investments in investee companies						
Adverse sustainability indicator		**Metric**	**Impact [year n]**	**Impact [year n-1]**	**Explanation**	**Actions taken**
CLIMATE AND OTHER ENVIRONMENT-RELATED INDICATORS						
Greenhouse gas emissions	1. GHG emissions	Scope 1 GHG emissions				
		Scope 2 GHG emissions				
		From 1 January 2023, Scope 3 GHG emissions				
		Total GHG emissions				
	2. Carbon footprint	Carbon footprint				

Adverse Impact Statement

Artikel 4 SFDR: Publicatie due diligence beleid

Criterium van 500 werknemers

Let op artikel 4 lid 1 sub b en lid 3 SFDR:

Indien niet:

1b) indien zij ongunstige effecten van beleggingsbeslissingen op duurzaamheidsfactoren niet in aanmerking nemen, duidelijke redenen daarvoor, met inbegrip van, indien relevant, informatie over de vraag of en wanneer zij voornemens zijn die ongunstige effecten wel in aanmerking te nemen.

Indien wel:

3) In afwijking van lid 1 publiceren en handhaven financiëlemarktdeelnemers die op hun balansdatum het criterium van het **gemiddeld aantal van 500 werknemers** in het boekjaar overschrijden, vanaf 30 juni 2021 op hun website een verklaring over hun "due diligence" beleid ten aanzien van de belangrijkste ongunstige effecten van beleggingsbeslissingen op duurzaamheidsfactoren. Die verklaring omvat ten minste de informatie bedoeld in lid 2.

Product Pre Contractual Disclosure

Informatieverplichtingen

Onderscheid tussen verzekeringsonderneming en verzekeringsadviseur is van belang voor welke informatieverplichtingen van toepassing zijn.

Verzekeringsonderneming

Entiteit-niveau

1. **Gedragslijnen** (art. 3 SFDR)
2. **Principal Adverse Impact Statement** (art. 4 SFDR)
3. Beloningsbeleid (art. 5 SFDR)
4. Periodieke verslagen (art. 11 SFDR)

Product-niveau

5. **Precontractueel op basis van categorie** (artt. 6/8/9 SFDR)
6. Ongunstige effecten op duurzaamheid (art. 7 SFDR)
7. Website (art. 10 SFDR)

Informatieverplichtingen

Onderscheid tussen verzekeringsonderneming en verzekeringsadviseur is van belang voor welke informatieverplichtingen van toepassing zijn.

Verzekeringsadviseur

Entiteit-niveau

1. **Gedragslijnen** (art. 3 SFDR)
2. **Principal Adverse Impact Statement** (art. 4 SFDR)
3. Beloningsbeleid (art. 5 SFDR)
4. Website (art. 10 lid 1 SFDR)

Product-niveau

5. Precontractuele informatie (art. 6 SFDR)

Informatieverplichtingen Financiële marktdeelnemers
Websites

1. Gedragslijnen integratie van duurzaamheidsrisico's in beleggingsbeslissingsprocedures.
   Art. 3 lid 1 SFDR

2. Verklaring due diligence beleid ongunstige effecten van beleggingsbeslissingen op duurzaamheidfactoren.
   Art. 4 lid 1 SFDR Principal adverse sustainability impacts statement
   Art. 4 RTS (aanmerking)
   Art. 11 RTS (geen aanmerking) No consideration of sustainability adverse impacts

3. Mate waarin beloningsbeleid spoort met de integratie van duurzaamheidsrisico's.
   Art. 5 lid 1 SFDR

4. Per financieel product: informatie omtrent ecologische of sociale kernmerken danwel duurzaamheid van het product.
   Art. 10 lid 1 SFDR Sustainability realted disclosures
   Art. 32 -44 RTS two sides of A4 No sustainable investement objective statement
   Art. 46 – 57 RTS two sides of A4 Statement objective of sustainable investment

5. Actualiseringsplicht website
   Art. 12 SFDR

Informatieverplichtingen Financiële adviseurs
Websites

1. Website: gedragslijnen integratie van duurzaamheidsrisico's in beleggingsbeslissingsprocedures.
   Art. 3 lid 2 SFDR

2. Website: in aanmerking nemen van ongunstige effecten van bij beleggings –of verzekeringsadvies.
   Art. 4 lid 5 SFDR Adverse sustainability impacts statement
   Art. 10 RTS (aanmerking)
   Art. 12 RTS (geen aanmerking) No consideration of sustainability adverse impacts

3. Website: mate waarin beloningsbeleid spoort met de integratie van duurzaamheidsrisico's.
   Art. 5 lid 1 SFDR

3. Actualiseringsplicht website
   Art. 12 SFDR

Presentation of information – RTS

Article 2 General principles for the presentation of information

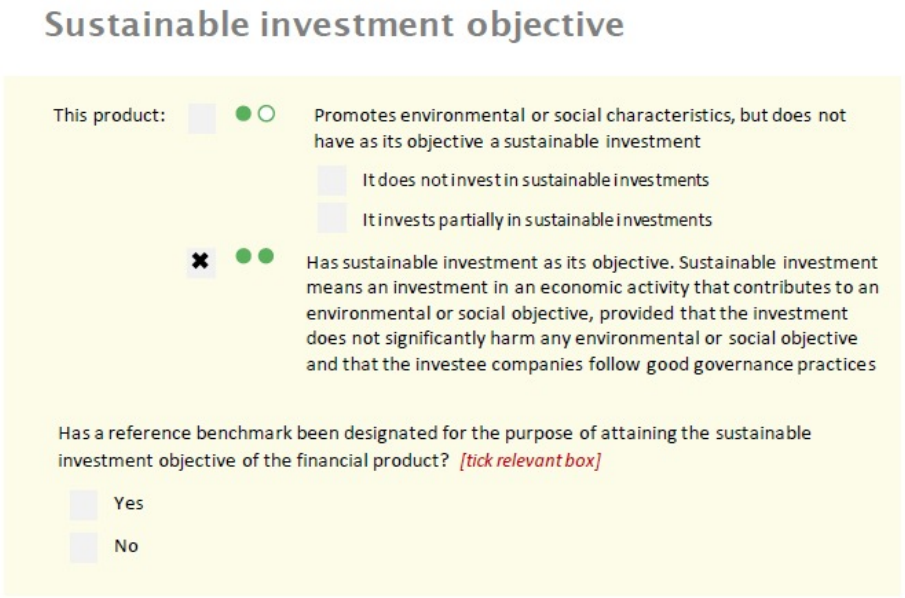
1. Financial advisers and financial market participants shall provide the information referred to in this Regulation in a manner that is **easily accessible, non-discriminatory, free of charge, prominent, simple, concise, comprehensible, fair, clear and not misleading**. They shall present and lay out the information in a way that is easy to read, use characters of readable size and use a style that facilitates its understanding.
2. Within the limits of paragraph 1, financial advisers and financial market participants may adapt the font type and size as well as colours of the templates provided in the Annexes.
3. Financial advisers and financial market participants shall provide the information referred to in this Regulation in searchable electronic format, except where the manner referred to in Articles 6(3) and 11(2) of Regulation (EU) 2019/2088 requires the information to be provided on paper.
4. Financial advisers and financial market participants shall keep the information published on their websites in accordance with this Regulation up to date. They shall include the date of publication of the information and clearly identify any updated text with the date of the update. Where that information is presented as a downloadable file, they shall indicate the version history in the file name.
5. Financial advisers and financial market participants shall provide, where available, legal entity identifiers (LEIs) and international securities identification numbers (ISINs) when referring to entities or financial products in the information provided in accordance with this Regulation.

Informatievoorziening SFDR

Precontractuele informatieverschaffing – Regulatory Technical Standards ESAs

Transparantie van duurzame beleggingen in precontractuele informatieverschaffing (artikel 9 SFDR)

Template precontractuele informatieverschaffing



Sustainable investment objective

This product:

☐ ●○ Promotes environmental or social characteristics, but does not have as its objective a sustainable investment

☐ It does not invest in sustainable investments

☐ It invests partially in sustainable investments

☒ ●● Has sustainable investment as its objective. Sustainable investment means an investment in an economic activity that contributes to an environmental or social objective, provided that the investment does not significantly harm any environmental or social objective and that the investee companies follow good governance practices

Has a reference benchmark been designated for the purpose of attaining the sustainable investment objective of the financial product? *[tick relevant box]*

☐ Yes

☐ No

Greenwashing

ACM leidraad duurzaamheidsclaims

Claims over duurzaamheid worden echter door consumenten vaak als onbetrouwbaar gezien. Bedrijven moeten eerlijk zijn over duurzaamheid, en mogen alleen duidelijke, juiste en relevante duurzaamheidsclaims gebruiken.

De ACM heeft 5 vuistregels opgesteld die bedrijven helpen om te werken met eerlijke duurzaamheidsclaims:

1. Maak duidelijk welk duurzaamheidsvoordeel het product heeft
2. Onderbouw duurzaamheidsclaims met feiten en houd ze actueel
3. Vergelijkingen met andere producten, diensten of bedrijven moeten eerlijk zijn
4. Wees eerlijk en concreet over de duurzaamheidinspanningen van uw bedrijf
5. Zorg dat visuele claims en keurmerken behulpzaam zijn voor consumenten en niet verwarrend

Vragen?

ESA - RTS – SFDR

CHAPTER I: DEFINITIONS AND GENERAL PROVISIONS

- Art. 1: Definitions
- Art. 2: General principles for the presentation of information
- Art. 3: Reference benchmarks with basket indexes

CHAPTER II: TRANSPARENCY OF ADVERSE SUSTAINABILITY IMPACTS

- **Section 1: Financial market participants**
  - Art. 4: Financial market participant principal adverse sustainability impact statement
  - Art. 5: Summary section
  - Art. 6: Description of principal adverse sustainability impacts section
  - Art. 7: Description of policies to identify and prioritize principal adverse sustainability impacts section
  - Art. 8: Engagement policies section
  - Art. 9: Reference to international standards section
- **Section 2: Financial advisers**
  - Art. 10: Financial advisers adverse sustainability impacts statement
- **Section 3: Financial market participant and financial adviser statement of no consideration of adverse impacts on sustainability factors**
  - Art. 11: Financial market participant statement of no consideration of adverse impacts on sustainability factors
  - Art. 12: Financial advisor statement of no consideration of adverse impacts on sustainability factors

ESA - RTS – SFDR

CHAPTER III: PRE-CONTRACTUAL PRODUCT DISCLOSURE

- **Section 1: Pre-contractual information for financial products referred to in Article 8(1) of Regulation (EU) 2019/2088 – Financial market participants**
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  - Art. 18: Website reference section for financial products that promote environmental or social characteristics
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ESA - RTS – SFDR

CHAPTER III: PRE-CONTRACTUAL PRODUCT DISCLOSURE

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- **Section 3: Pre-contractual information for financial products with investment options**
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ESA - RTS – SFDR

CHAPTER IV: WEBSITE PRODUCT DISCLOSURE

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- Art. 31: Website sustainability-related product disclosure section
- Art. 32: Website product disclosure for financial products referred to in Article 8(1) of Regulation (EU) 2019/2088
- Art. 33: Summary website section for products that promote environmental or social characteristics
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- Art. 35: Environmental or social characteristics of the financial product website section
- Art. 36: Investment strategy for products that promote environmental or social characteristics website section
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ESA - RTS – SFDR

CHAPTER IV: WEBSITE PRODUCT DISCLOSURE

- Art. 45: Website product disclosure for financial products referred to in Article 9(1), (2) and (3) of Regulation (EU) 2019/2088
- Art. 46: Summary website section for financial products with the objective of sustainable investment
- Art. 47: No significant harm to the sustainable investment objective website section
- Art. 48: Sustainable investment objective of the financial product website section
- Art. 49: Investment strategy for financial products with the objective of sustainable investment website section
- Art. 50: Proportion of investments for financial products with the objective of sustainable investment website section
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ESA - RTS – SFDR

CHAPTER V: PRODUCT DISCLOSURE IN PERIODIC REPORTS

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ESA - RTS – SFDR

CHAPTER V: PRODUCT DISCLOSURE IN PERIODIC REPORTS

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