



THE SUPERVISORS PERSPECTIVE:
APPLYING THE SAME STANDARDS AS FOR BANKS? –
DEBT FUNDS BETWEEN AIFM AND BANKING ESG
REGULATION

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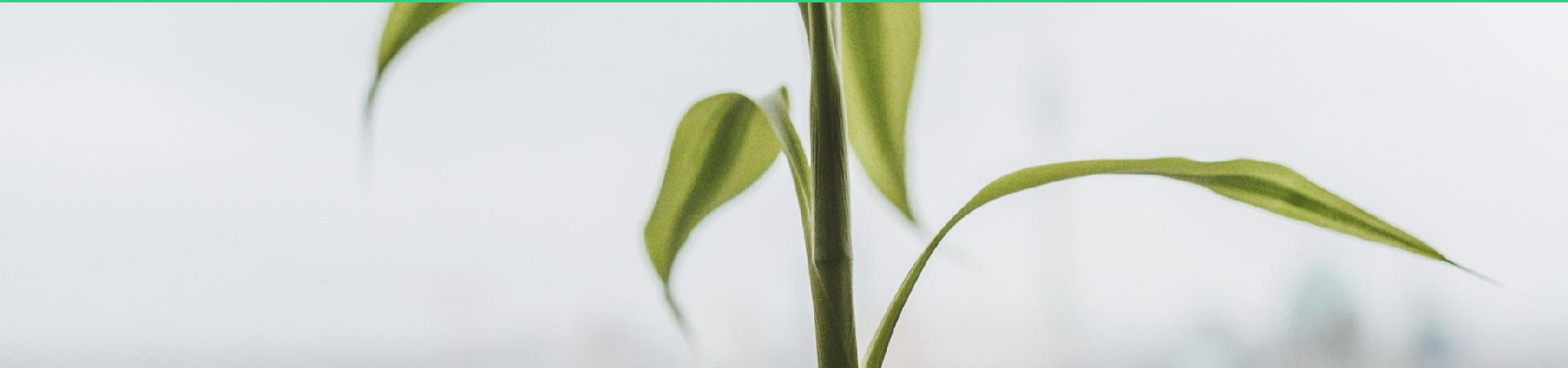
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PARTNERSCHAFT VON
RECHTSANWÄLTINNEN UND
RECHTSANWÄLTEN mbB

AGENDA

1. ESG REGULATION AT A GLANCE
2. ESG REGULATION AND DEBT FUNDS – WHAT IS APPLICABLE?
 1. DISCLOSURE
 2. RISK MANAGEMENT
 3. NON-FINANCIAL REPORTING
3. TAKE AWAYS

1. ESG REGULATION AT A GLANCE



THE EU WANTS TO PLAY ITS PART IN ACHIEVING THE PARIS CLIMATE GOALS AND THE 17 SDGS



Green



Green/Blue

FOR THIS PURPOSE THE EU AIMS TO ENTIRELY ADJUST THE EUROPEAN FINANCIAL MARKET TO ESG

EU Action Plan „Sustainable Growth“ (2018)

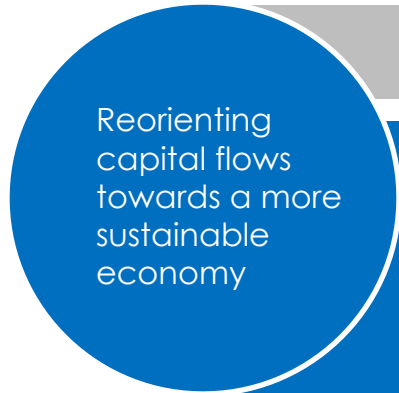


Reorienting capital flows toward a more sustainable economy

Mainstreaming sustainability in risk management

Fostering transparency and long-termism

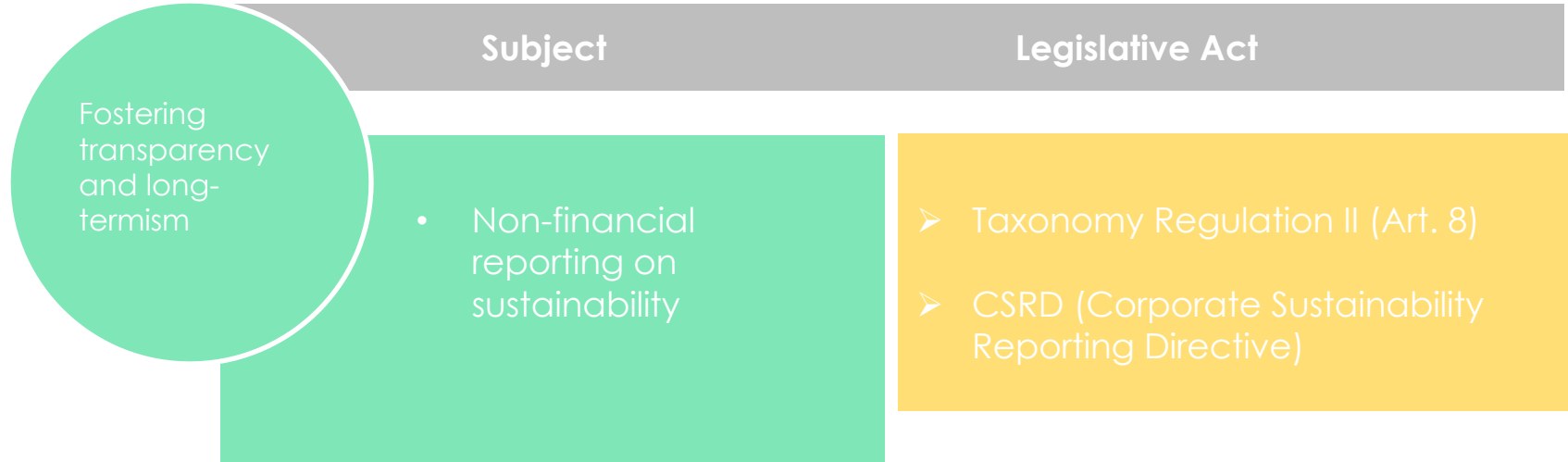
INVESTORS WITH ESG PREFERENCES SHOULD BE ABLE TO PURCHASE REGULATED ESG PRODUCTS

	Subject	Legislative Act
 <p>Reorienting capital flows towards a more sustainable economy</p>	<ul style="list-style-type: none">• Taxonomy• Disclosure• Product Governance/ Investment Advice• CO2-Benchmarks• ESG-Ratings	<ul style="list-style-type: none">➤ Taxonomy Regulation I➤ SFDR➤ Amendments MiFID II/IDD Level 2➤ Amendments BenchmarkVO➤ Consultation/Impact Assessment

BANKS AND ASSET MANAGER SHOULD CONSIDER ESG-RISIKEN

	Subject	Legislative Act
Integration of sustainability in risk management	<ul style="list-style-type: none">• Risk management of credit institutions• Risk management of institutional investors• Risk management of rating agencies	<ul style="list-style-type: none">• Framework rules in CRD V/ CRR II• Delegated Regulation on AIFMD• EBA report / ECB guide on climate-related and environmental risks / BaFin-Merkblatt• Banking package 2021 - CRD VI/CRR III

UNDERTAKINGS SHOULD REPORT TAXONOMY-ALIGNMENT OF THEIR ECONOMIC ACTIVITIES



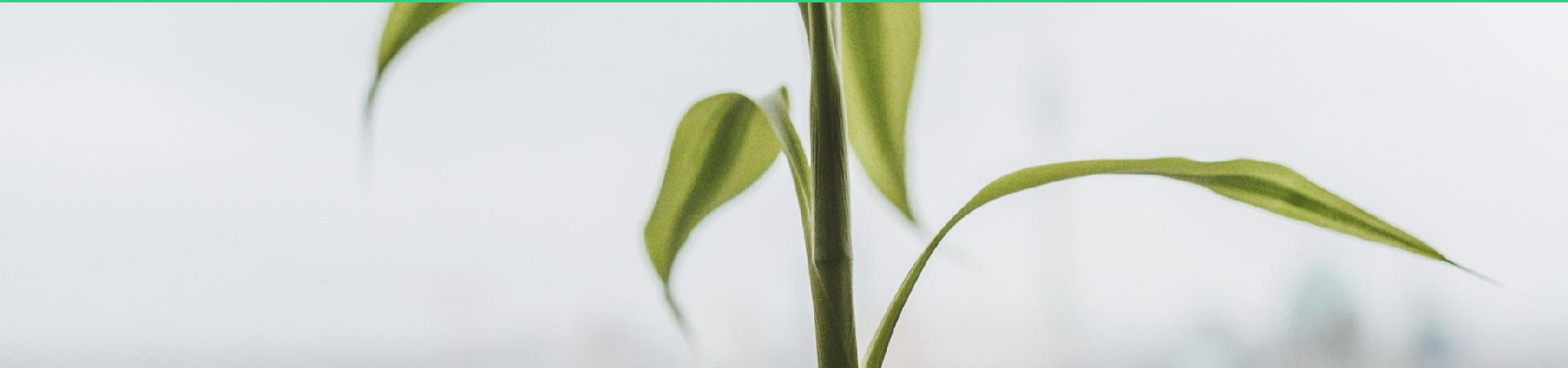
LEVEL 1 IS LARGELY COMPLETED, LEVEL 2 NOT YET (1)

	Level 1	Entry into force	Level 2	Status	Entry into force
Taxonomy I	Regulation (EU) 2020/852	1 January 2022	DeIR 2021/ 2139 technical screening criteria(clima)	Final	1 January 2022/2023
SFDR	Regulation (EU) 2019/2088	10 March 2021	Final Draft DeIR "Single Rule Book"	Close to final	1 January 2023
MiFID II/IDD	n.a.	n.a.	Amendments: <ul style="list-style-type: none"> • DeIR 2017/593 • DeID 2017/593 • DeIR 2017/2358 	Final	2 August 2022

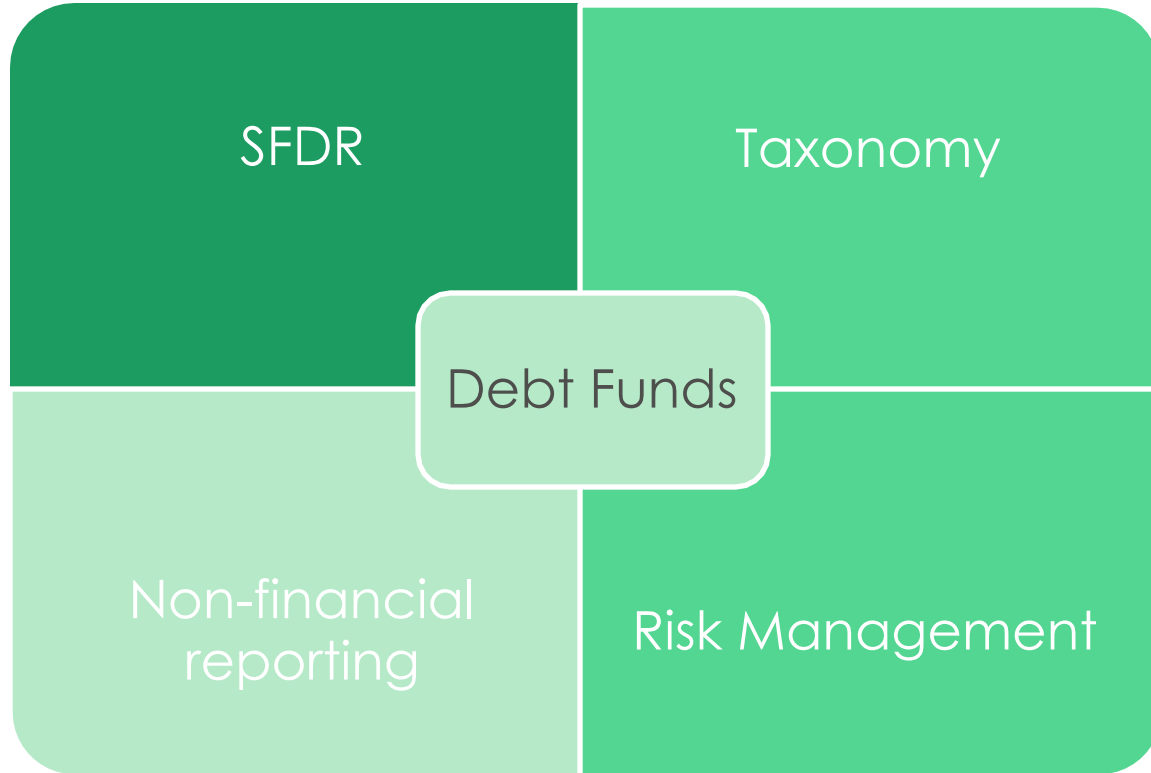
LEVEL 1 IS LARGELY COMPLETED, LEVEL 2 NOT YET (2)

	Level 1	Inkrafttreten	Level 2	Stand	Inkrafttreten
Amendment Benchmark	Regulation (EU) 2019/2089	Phased entry from 10 Dezember 2019	DeIR (EU) 2020/1818	Final	23 December 2020
Taxonomie II (Art. 8)	Regulation (EU) 2020/852	Phased entry from 1 Januar 2022	DeIR(EU) 2021/2178	Final	1 January 2022
CSRD	Not yet final (Draft KOM dated 21 April 2021)	Planned 1 January 2023	5 RTS planned	Not yet available	Planned 1 Januar 2023

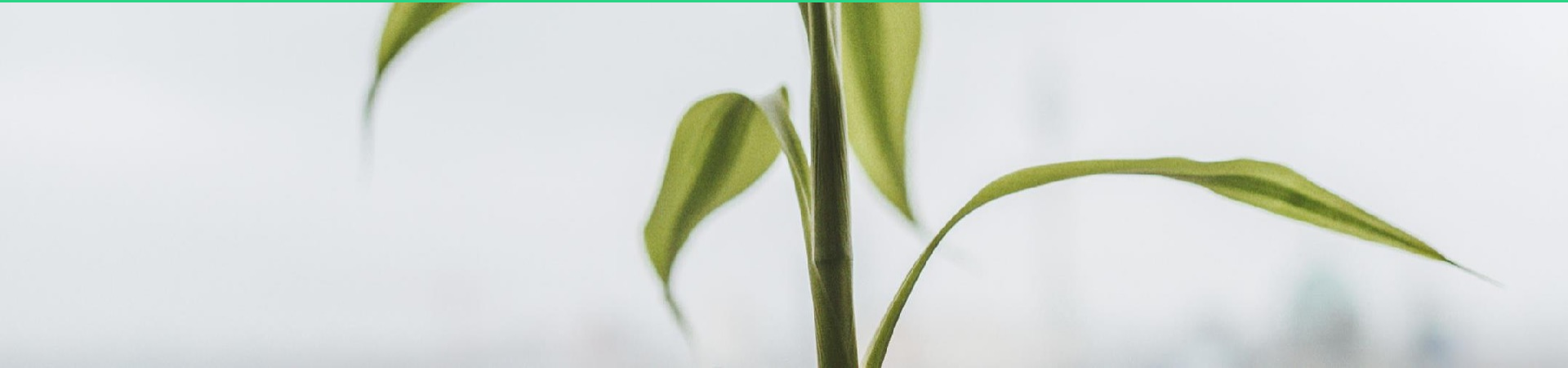
2. ESG REGULATION AND DEBT FUNDS – WHAT IS APPLICABLE?



MANAGING DEBT FUNDS REQUIRES CAREFUL CONSIDERATION OF THE APPLICABLE ESG REGULATION

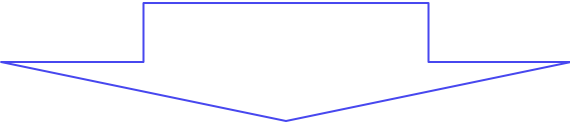


2.1 DISCLOSURE




BOTH FULLY LICENSED AND REGISTERED AIFM ARE FINANCIAL MARKET PARTICIPANTS PURSUANT TO SFDR

Q&A EU-Commission July 2021



Entity level
SFDR-Disclosure applicable also to registered AIFM

 Ref: Ares(2021)4556843 - 14/07/2021

EN
ANNEX

Question 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 [Sustainable Finance Disclosure Regulation 2019/2088]

ESA: ESMA, EIOPA and EBA
Question ID:
Regulation reference: Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services
Topic: sustainable finance disclosures
Article: points (1) and (4) of Article 2

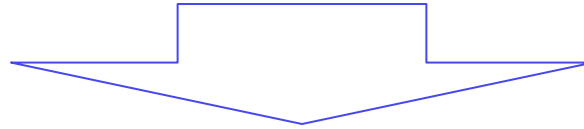
1. Question
Does Regulation (EU) 2019/2088 (SFDR) apply to registered (sometimes referred to as sub-threshold) AIFMs referred to in Article 3(2) AIFMD?

2. Answer
It follows from points (1) and (4) of Article 2 Regulation 2019/2088 that for the purposes of the Regulation a 'financial market participant' comprises an 'alternative investment fund manager', as defined in point (b) of Article 4(1) of Directive 2011/61/EU¹, including those which have their registered office in a Member State (EU AIFMs) and those which have their registered office in a third country (non-EU AIFMs). Directive 2011/61/EU lays down the conditions under which a non-EU AIFM, i.e. an AIFM from a third country, may carry out its activities within the Union. Given the absence of the activation of the AIFM third country passport under Article 67(4) and (6) of that Directive, access to end investors in individual Member States may be on the basis of national laws set out in National Private Placement Regimes. Where an AIFM from a third country enters the market of a given Member State by means of a National Private Placement Regime, that AIFM must ensure compliance with Regulation 2019/2088, including the financial product related provisions.

¹ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers (OJ L 174, 1.7.2011, p. 1).

1

DEBT FUNDS (= AIF) ARE FINANCIAL PRODUCTS PURSUANT TO SFDR



Product Level
SFDR Disclosure is applicable to debt
funds

SFDR REQUIRES ENTITY RELATED AND PRODUCT RELATED INFORMATION

Entity level

Art. 3 SFDR: Sustainability risk policies:

- investment decisions
- investment or insurance advice

Art. 4 SFDR: transparency on consideration of principal adverse impacts on sustainability factors
(PAI-Statement)

Art. 5 SFDR: Transparency on remuneration policies in relation to the integration of sustainability risks

Product level

Art. 6 SFDR: Integration of sustainability risk on product level

Art. 8 SFDR: Transparency on the promotion of environmental or social characteristics

Art. 9 SFDR: Transparency on sustainable investments

ESG INFORMATION IS TO BE DISCLOSED VIA THREE MEDIA

Precontractual disclosures

Website

Periodic reports

Level 1

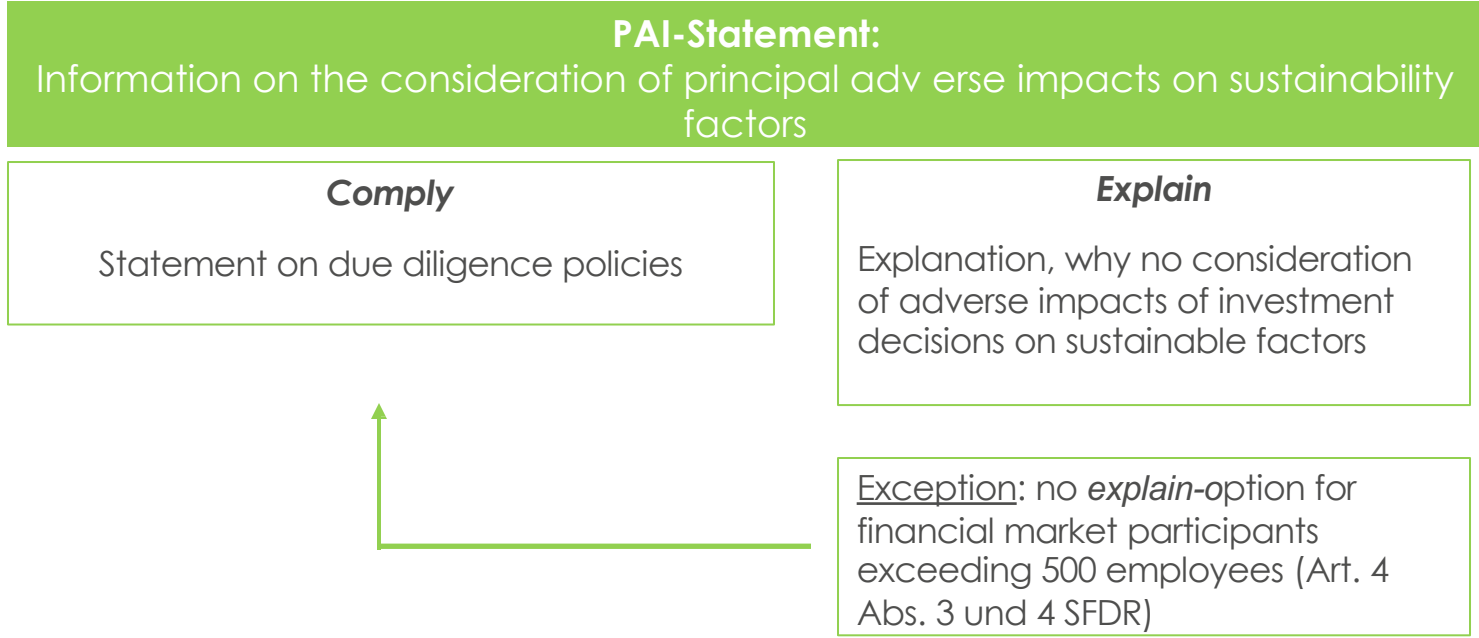
Since 10 March 2021

Since 10 March 2021

Since 1 January 2022

Level 2: As of 1 January 2023

SFDR ALLOWS “COMPLY OR EXPLAIN” APPROACH FOR PAI-STATEMENT



PAI-STATEMENT TO BE PUBLISHED ON ENTITY LEVEL AND – FROM 2023 – ON PRODUCT LEVEL

PAI-Statement Entity Level

Art. 4 SFDR

Since 10 March 2021: Level 1

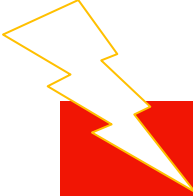
From **1. January 2023**: Level 2
→ Compliance with RTS requirements

PAI-Statement Product Level


Art. 7 SFDR

From 30 December 2022 at the latest

FOR ESG-PRODUCTS (ART. 8/9 SFDR) DETAILED INFORMATION ON ESG FEATURES ARE TO BE DISCLOSED VIA SPECIFIC TEMPLATES



When promoting exclusions or other ESG characteristics debt funds are regarded as Art. 8 products


 **What is the minimum share of investments aligned with the EU Taxonomy?**
*[include subsection for financial products referred to in Article 5 of Regulation (EU) 2020/852]
[where information relating to the taxonomy alignment of investments is not readily available from public disclosures by investee companies, include details of how equivalent information was obtained directly from investee companies or from third party providers]*

The graph below shows in green the minimum percentage of investments that are aligned with the EU Taxonomy. *[include statement and question for financial products referred to in Article 5 of Regulation (EU) 2020/852 with sustainable investments in environmentally sustainable economic activities]*

The minimum percentage of investments of the financial product that are aligned with the EU Taxonomy are made in environmentally sustainable economic activities.

Was this statement subject to an external review by a third party?

Yes: *[include name of third party]*
 No

 The symbol refers to investments that finance activities considered sustainable under the EU Taxonomy. The EU Taxonomy is a classification system, establishing a list of environmentally sustainable economic activities.

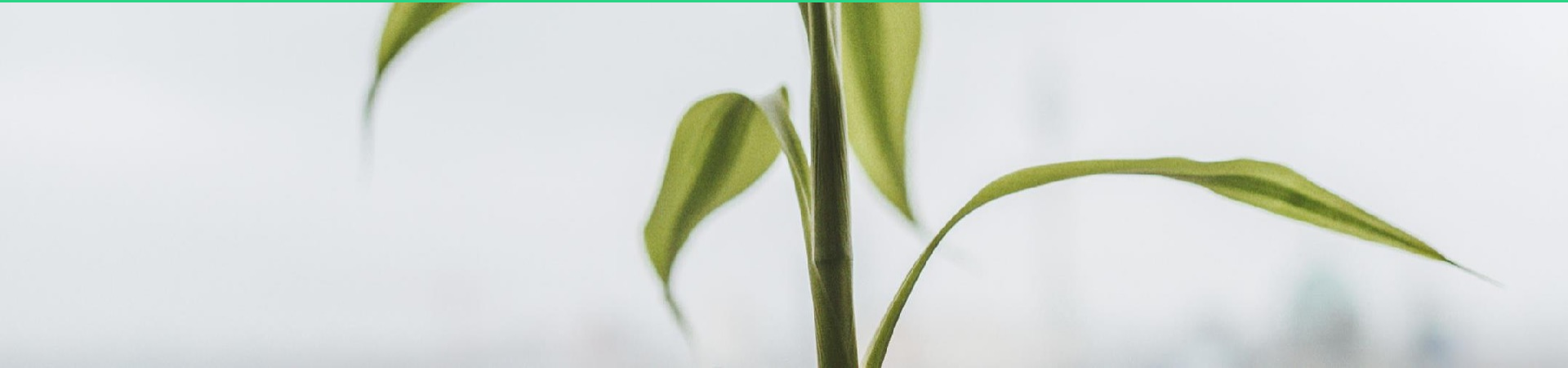
- **What methodology is used for the calculation of the alignment with the EU Taxonomy and why?** *[indicate methodology chosen for non-financial investee companies and the reasons for that choice including how that choice is appropriate for investors in the financial product]*
- **What is the minimum share of transitional and enabling activities?**

Level 2 SFDR
template for
Art. 8 product

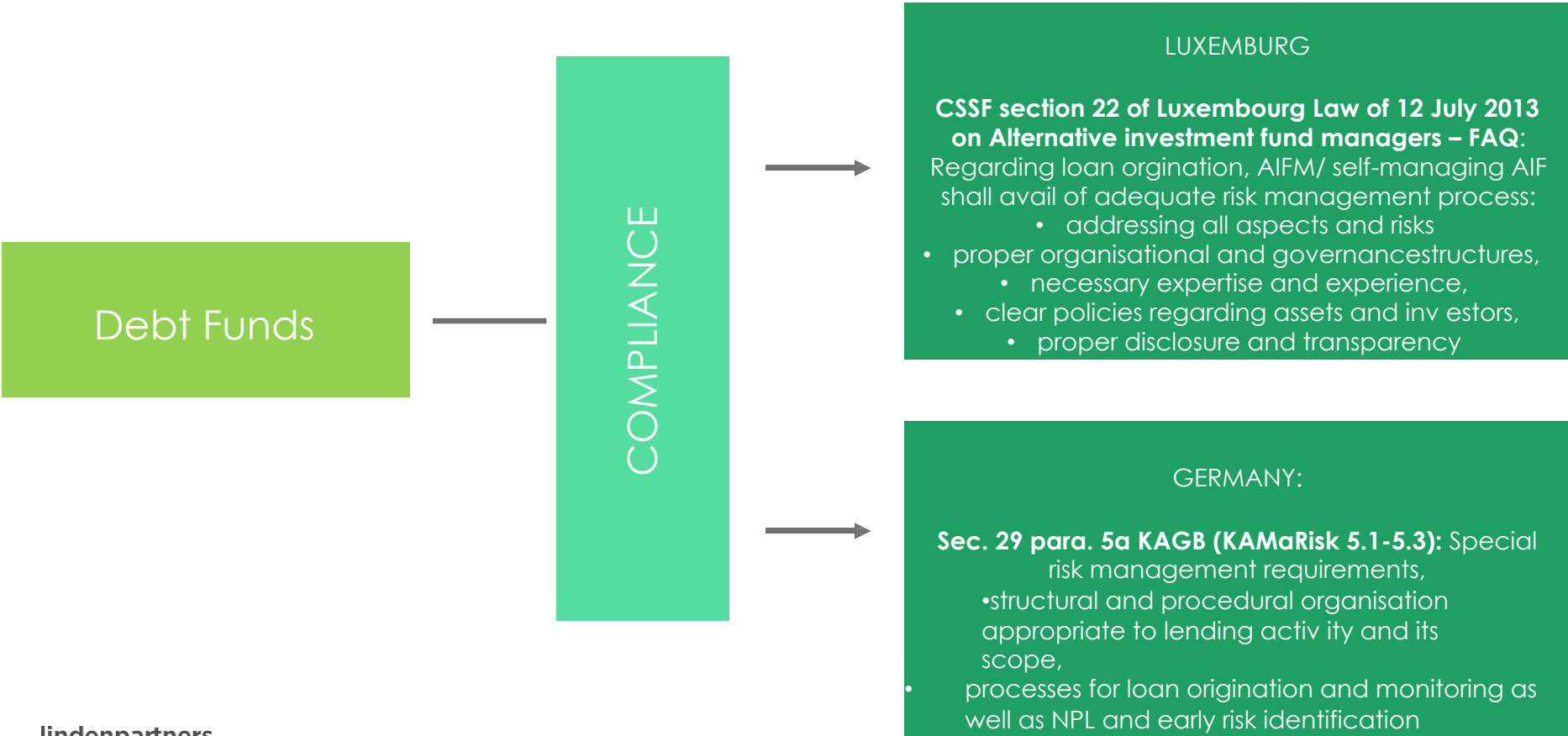
To be integrated from 1 January 2023 in
Private Placement Memorandum (PPM)¹⁾

¹⁾ Cf. In Germany: Sec. 307 para 1 (20) KAGB

2.2 RISK MANAGEMENT



DEBT FUNDS MUST HAVE IN PLACE LOAN ORIGINATION AND MONITORING PROCESSES SIMILAR TO BANKS



EUROPEAN RISK MANAGEMENT REQUIREMENTS ARE APPLICABLE TO AIFM

Legal Source	Requirements	Applicable to AIFM
Delegated Regulation 2021/1255 (<i>applies from 1 August 2022</i>)	Consideration of ESG-Risks in <ul style="list-style-type: none"> - Due Diligence - Ressources - Conflicts of Interests - Risk management - Governance - Management Responsibility 	✓ (not applicable to registered AIFM ¹)
BaFin-Merkblatt Sustainability Risks + Ziff.4 KAMaRisk	Consideration of ESG-Risks a.o. in <ul style="list-style-type: none"> - Assessment of riskmateriality - Comparison of overall riskprofile with risk coverage potential 	✓

¹ Pursuant to §§ 2 (4) n. 4 , 26 (7) KAGB applicable to debt funds managers registered in Germany

BAFIN RECOMMENDS ADDRESSING ESG RISK WITHIN THE INTERNAL PROCESSES



- **Who:** Financial undertakings under BaFin's supervision
- **Objective:** Addressing ESG Risk „top down“ within the financial undertaking; strategy development
- **Content:**
 - Strategic management involvement with ESG Risks within business and risk strategy
 - Holistic assessment, of whether and how ESG Risks can be integrated into existing organizational guidelines and processes
 - Ensuring that ESG Risks are addressed and documented within the risk management system

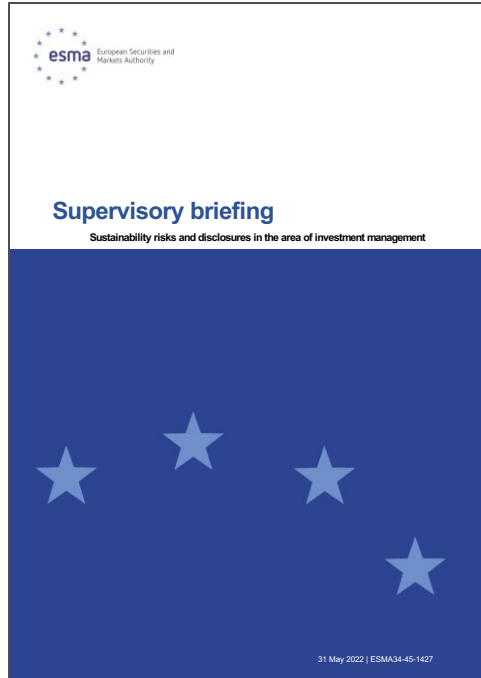
ESMA PROVIDES GUIDANCE ON SFDR-DISCLOSURE AND INTEGRATION ON ESG RISKS IN ORGANISATIONAL FRAMEWORK AND DECISION-MAKING PROCESS

Supervisory briefing intends to enhance convergence among NCA

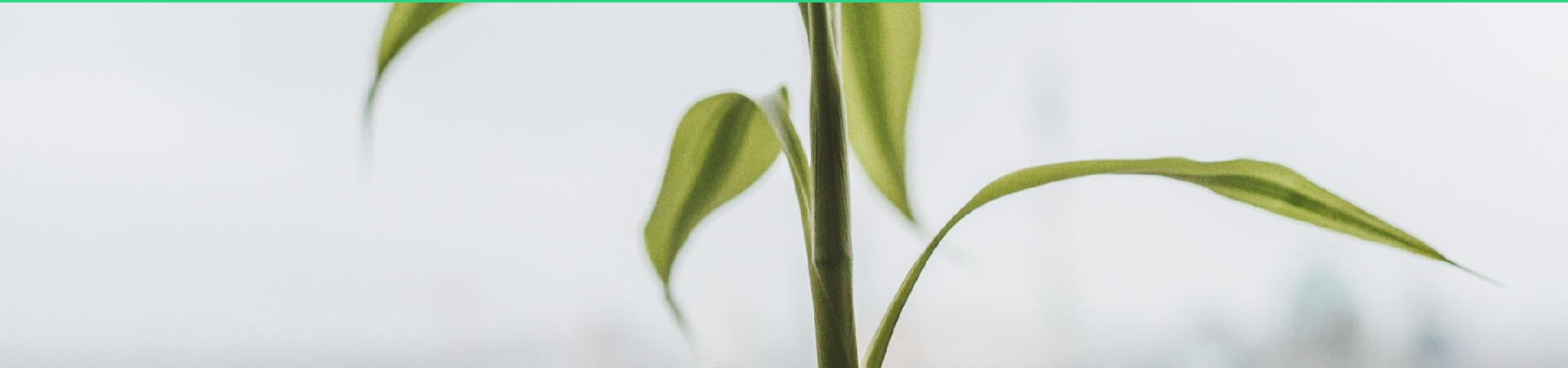
⇒ to increase transparency

⇒ to avoid
„Greenwashing“

- Guidance addresses:
- Supervision of fund documentation and marketing material
- Integration of sustainability risks by AIFM and UCIT managers
- Regulatory interventions in case of breaches



2.3 NON-FINANCIAL REPORTING



NON-FINANCIAL REPORTING (1)

TAXONOMY ALIGNMENT OF UNDERTAKINGS SHALL BE TRANSPARENT AND COMPARABLE



REPORTING IS TO BE CARRIED OUT ON THE BASIS OF SPECIFIC KPI* IN THE MANAGEMENT REPORT

Reporting obligations

DeiR Art. 8

Non-financial undertakings



Green KPI for
Turn over /Capex/Opex

Financial undertakings

Asset
manager

Credit
institution

Investment
firm

Insurance



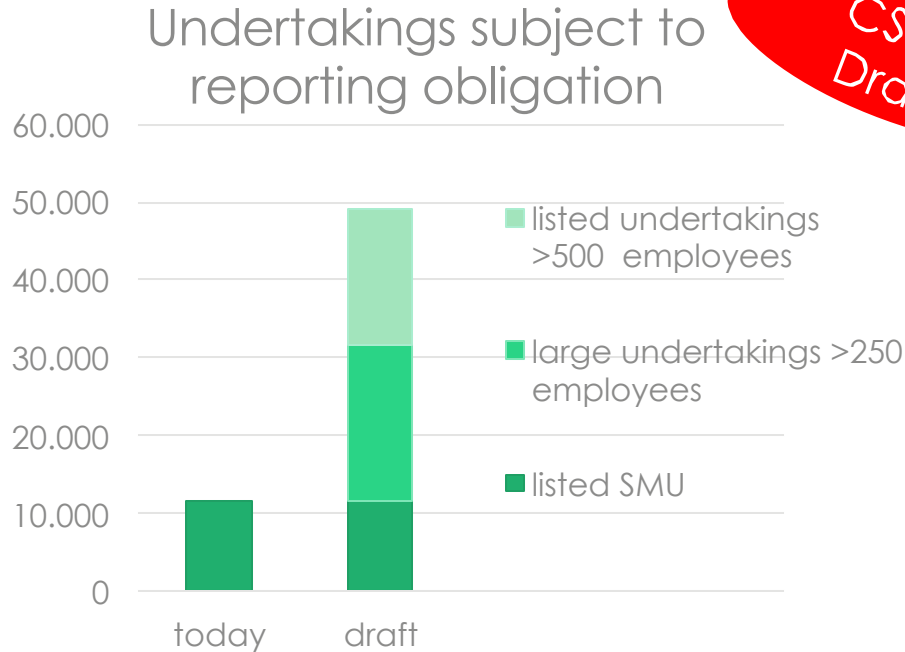
Green
Investment
Ratio

Green
Asset Ratio

Green KPI

Green KPI

CSRD WILL EXTEND NON-FINANCIAL REPORTING ON ESG TO „LARGE“ AIFM



CSRD
Draft

CSRD-Reporting content

- Business model, business strategies and sustainability targets
- the principal actual or potential adverse impacts connected with the undertaking's value chain
- ESG Due-Diligence-process
- „materiality assessment“

When?

According to CSRD Draft starting for 2023 fiscal year (Presidency compromise text proposes time shift)

LARGE DEBT FUNDS MANAGERS WILL ALSO BE REQUIRED TO DISCLOSE THEIR GIR

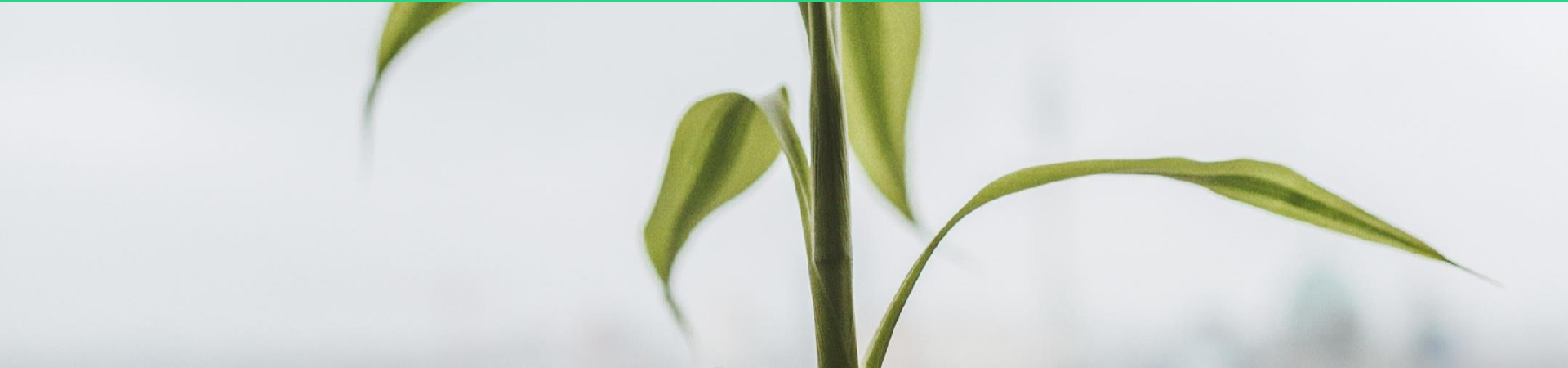
GIR
(= Green Investment Ratio)



The weighted average value of all the investments that are directed at funding, or are associated with taxonomy – aligned economic activities

value of total assets

3. TAKE AWAYS



1. EU Sustainable Finance regulation aims at reorienting capital flows towards sustainable investments, fostering resilience within the financial sector and promoting transparency.
2. EU Sustainable Finance regulation is also applicable to debt funds and their managers:
 - ⇒ Debt funds managers (financial market participants) and debt funds (financial product) are subject to SFDR disclosures which require entity related and product related ESG-information.
 - ⇒ Similar to banks debt funds managers will have to take into account sustainability risks/factors when originating and monitoring loans.
 - ⇒ Large debt fund managers will be subject to non-financial reporting and will thereafter have to report in particular on their taxonomy alignment.

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