C A D W A L A D E R


# French Financial Regulator Calls for Review of SFDR Minimum Standards

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On February 13, the **Autorité des marchés financiers (AMF)**, the French financial regulator, **proposed** the introduction of legislation to establish “minimum environmental requirements” that must be met in order for financial products to be classified as Article 8 or Article 9 under the Sustainable Finance Disclosure Regulation (SFDR). The AMF explains that since the SFDR “does not impose minimum requirements and does not define the concept of sustainable investment . . . the current Article 8 and Article 9 classification does not aim to assess the nature or extent of the manager's commitment to sustainability.”

As defined in the SFDR, Article 8 funds are those that promote Environmental or Social characteristics but do not have them as the overarching objective. Article 9 funds are those that have specific sustainable goals as their objective.

The AMF proposes that, “in order to avoid . . . ambiguity and to better meet the expectations of savers,” the European Commission introduce minimum criteria concerning environmental impacts for products categorized under Articles 8 or 9. It suggests the following recommendations:

- Minimum environmental criteria should be established for the classification of products as Article 9 or Article 8. Compliance with these criteria would be subject to national supervision. The criteria for Article 9 should continue to be more stringent than those for Article 8.
- A minimum proportion of portfolio assets for Article 9 funds should consist of investments aligned with the Taxonomy. This percentage could increase over time as the European economy advances towards sustainability.
- Financial market participants that manage Article 8 and 9 funds should adopt a binding ESG approach in their investment decision-making process. The EU framework for minimum

criteria should identify a set of acceptable ESG approaches that can be implemented by financial players.

- Article 9 funds should exclude investments in fossil fuel activities that are not aligned with the European Taxonomy. Investment in such activities would be possible for Article 8 products provided that they meet strict conditions that ensure that these activities are engaged in an orderly transition.

The SFDR recently received **criticism** from some European asset managers for its lack of clarity and precision. This **uncertainty** has led to a number of asset managers announcing that they are downgrading ESG funds from Article 9 to the less restrictive Article 8. In the fourth quarter of 2022, asset managers downgraded funds totaling 175 billion euros ($187 billion) of assets from Article 9 to Article 8. In this same vein, in a response to a call for evidence on greenwashing by the European Securities and Markets Authority (ESMA), the Securities and Markets Stakeholder Group (SMSG) **recommended** further clarification of what qualifies for Article 8 and Article 9 fund classification under the SFDR.

**Taking the Temperature: The perceived lack of precision on what constitutes a suitable Article 9 investment – *i.e.*, those that have specific sustainable goals as their objective – remains a major concern for asset managers. Funds are, understandably, hesitant to make sustainability-related claims or agree to strict criteria, such as the Article 9 classification, without clarity as to what constitutes a sustainable investment due to a risk of greenwashing challenges. This has not stopped all asset managers from establishing Article 9 funds. For example, Goldman Sachs recently announced that it had closed over $1.6 billion in funding for its Article 9 Horizon Environment & Climate Solutions I fund.**