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## Disclosure: Continued Uncertainty Over Sustainability Classifications Under SFDR

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Disclosure



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As we [discussed](#) last week, a number of European asset managers, including Amundi, AXA, and BNP Paribas, have announced their plans to reclassify the sustainability profile of investment funds from Article 9 to the less onerous Article 8 under the EU's Sustainable Finance Disclosure Regulation (SFDR). These announcements follow draft guidelines published on November 18 by the European Securities and Markets Authority (ESMA) as part of a consultation (closing February 20, 2023) on funds' names using ESG or sustainability-related terms. The main elements of ESMA's consultation paper are (i) a quantitative threshold (80%) for the use of ESG-related words; and (ii) an additional threshold (50%) for the use of "sustainable" or any sustainability-related terms only, as part of the 80% threshold. In addition, [guidance](#) from ESMA published in May suggests that Article 9 funds should be as close to 100% sustainable as possible. Some of these management companies identified as the reason for the change a lack of guidance regarding how to apply existing regulatory announcements in distinguishing Article 8 from Article 9 funds.

Further highlighting the difficulties in sustainability classifications, a [report](#) published last week posits that almost half of 838 funds classified as Article 9 under the SFDR, with approximately EUR 620 billion (\$655 billion) of assets under management, have exposure to the fossil fuels or aviation industries (the latter of which accounts for approximately 2% of human-produced greenhouse gas emissions). The researchers reviewed 1,141 Article 9 classified funds and were able to gain access to the investment portfolios of 838 of them. This report also observes support for the idea that there is a lack of guidance as to what constitutes a sustainable investment under the SFDR. The report notes that several national European regulators take the position that the ESMA guidance is not sufficiently specific, even with respect to fossil fuel companies, for them to take enforcement action for including these investments in Article 9 funds, including regulators in France, Luxembourg, and the Netherlands.

**Taking the Temperature: As we have discussed, the SFDR's sustainability classification system is under scrutiny because of criticisms that it lacks clarity and precision. At the same time, concerns on the part of the asset management industry about being faced with greenwashing allegations continue to mount. Until enforcement activity is matched by regularity clarity, firms will continue to struggle with sustainability labels and may resort to greenhushing, thereby frustrating regulatory goals of greater, not less, disclosure.**