MIZUHO

Regulatory News

Q2 2021

Japan Fund Management (Luxembourg) S.A.

Executive Summary (1 of 2)

CSSF FAQ updates

4-May-21: The CSSF published a “User Guide concerning reporting under Art.37 of the MMFR” and a list of “MMFR Error Codes”.

4-Jun-21: The CSSF updated the FAQ regarding the fight against money laundering and terrorist financing (AML/CFT) for individuals/investors.

10-Jun-21: The CSSF updated the FAQ concerning the Luxembourg Law of 17 December 2010 relating to undertakings for collective investment (version 11) and the FAQ concerning the Luxembourg Law of 12 July 2013 on alternative investment fund managers (version 19).

15-Jun-21: The CSSF updated the FAQ (Part II) on the statuses of PFS with respect to the granting of loans to the public.

ESMA Q&A updates

28-May-21: ESMA published a revised version of both its Q&A on application of AIFMD and its Q&A on application of UCITS Directive.

MiFID & MiFIR

1-Apr-21: ESMA proposes extending MiFIR transaction reporting to management companies providing MiFID services.

10-Jun-21: The CSSF published an FAQ on the application of the MiFID to investment fund managers.

EMIR & SFTR

15-Apr-21: ESMA published for the first time its “Data Quality Report” to highlight its supervisory activities regarding the quality of data reported to Trade Repositories under EMIR and SFTR.

20-May-21: ESMA published updated Q&A both on EMIR and on SFTR data reporting.

Data Protection

4-Jun-21: The EC adopted the Standard Contractual Clauses (SCCs), i.e. sets of standardized contractual terms, conditions and obligations that aim to ensure the transfer of personal data leaving the EU/EEA complies with the EU’s data privacy laws and requirements.

Executive Summary (2 of 2)

ESG	**21-Apr-21**: The EC adopted delegated legislation integrating sustainability into AIFMD and UCITS Directive. **21-Jun-21**: The CSSF published Circular CSSF 21/773, a new guidance on the management of climate-related and environmental risks.
Funds Distribution	**27-May-21**: ESMA published its final report on the Guidelines under the Regulation (EU) 2019/1156 on cross-border distribution of funds. **15-Jun-21**: Commission Implementing Regulation (EU) 2021/955, laying down technical standards under the Cross-Border Distribution Regulation, has been published in the Official Journal of the EU.
PRIIPs	**10-May-21**: The EC renewed the extension of the exemption for UCITS KIIDs and the application of the new RTS requirements on PRIIPs-KIDs from 1 January 2022 to 1 July 2022.
Securitisation	**6-Apr-21**: Regulation (EU) 2021/557 and Regulation (EU) 2021/558 to support the economic recovery in response to the COVID-19 crisis. **17-May-21**: The Joint Committee of the European Supervisory Authorities published its analysis on the implementation and the functioning of the EU Securitisation Regulation. **21-May-21**: A draft Bill of law No. 7825 amending the Law of 22 March 2004 on securitisation was submitted to the Luxembourg Parliament.
Miscellaneous	**9-Apr-21**: The CSSF published Circular 21/769 regarding governance and security requirements for supervised entities to perform tasks or activities through telework. **21-Apr-21**: The EC proposed the first-ever regulation laying down harmonized rules on artificial intelligence.

CSSF FAQ Updates (1 of 9)

4-May-21: The CSSF published a “User Guide concerning reporting under Art.37 of the MMFR” and a list of “MMFR Error Codes”.

https://www.cssf.lu/wp-content/uploads/MMFR_User_Guide.pdf
https://www.cssf.lu/wp-content/uploads/MMFR_Error_codes.xlsx

Pursuant to Article 37 of Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds (“MMFR”), the manager of a money market fund (“MMF”) is required to report certain information to the competent authority of the MMF.

On 4 May 2021, the CSSF published on its website a “User Guide concerning reporting under article 37 of the MMFR” (the “User Guide”) and a list of “MMFR Error Codes”. The purpose of these documents is to provide Investment Fund Managers with an explanation on recurring problems encountered with the MMFR reporting and the full list of ESMA error messages. The CSSF will update these documents in case of needs.

In particular, the User Guide covers practical and technical aspects such as:

- Reporting deadlines;
- Report naming;
- Report content;
- Checks performed by the CSSF and ESMA;
- Actions to correct reporting errors.

CSSF FAQ Updates (2 of 9)

4-Jun-21: The CSSF updated the FAQ regarding the fight against money laundering and terrorist financing (AML/CFT) for individuals/investors.

https://www.cssf.lu/wp-content/uploads/FAQ_AMLCTF.pdf

New Q&A:

Q7 What are the latest developments in relation to international financial sanctions?

A7 The Law of 19 December 2020 on the implementation of restrictive measures in financial matters, which entered into force on 27 December 2020, provides new insights on this topic. Indeed, the purpose of this law is the implementation of restrictive measures in financial matters by the Grand Duchy of Luxembourg in respect of certain States, natural and legal persons, entities and groups. Restrictive measures in financial matters must be applied by:

a) natural persons of Luxembourg nationality, who reside or operate in or from the territory of the Grand Duchy of Luxembourg or abroad;
b) legal persons having their registered office, a permanent establishment or their centre of main interests on the territory of the Grand Duchy of Luxembourg and which operate in or from the Grand Duchy of Luxembourg or abroad;
c) branches of Luxembourg legal persons established abroad and branches in the Grand Duchy of Luxembourg of foreign legal persons; and
d) all other natural and legal persons operating on the territory of the Grand Duchy of Luxembourg.

The natural and legal persons that are required to implement the restrictive measures provided for in this law shall inform the Minister responsible for Finance of the enforcement of each restrictive measure taken in respect of a State, natural or legal person, entity or group designated in accordance with the above law and the regulatory implementing texts, including attempted transactions.

The CSSF is, in particular, responsible for the supervision of the professionals falling within its competence for the purposes of the implementation of this law. To this end, it may apply all the measures and exercise all the powers, including sanctioning powers, conferred on it, in accordance with the applicable legal provisions. Without prejudice to the application of more severe penalties provided for by other legal provisions, where applicable, infringements of this law shall be punishable by a term of imprisonment of eight days to five years and a fine of between EUR 12,500 and EUR 5,000,000 or by one of these penalties only.

CSSF FAQ Updates (3 of 9)

10-Jun-21: The CSSF updated the FAQ concerning the Luxembourg Law of 17 December 2010 relating to undertakings for collective investment (version 11) and the FAQ concerning the Luxembourg Law of 12 July 2013 on alternative investment fund managers (version 19).

https://www.cssf.lu/wp-content/uploads/FAQ_Law_17_December_2010.pdf
https://www.cssf.lu/wp-content/uploads/FAQ_AIFMD.pdf

New Q&As:

Q10.1 Do IFMs and UCIs qualify as clients under MiFID?

A10.1 Yes. UCIs and their investment fund manager qualify as clients under article 1 (3) of the Law of 1993 / article 4 (1) (9) of MiFID.

Q10.2 How should the exemption from MiFID for UCIs and their IFM foreseen under article 2(1) (i) MiFID be understood?

A10.2 The management of collective funds by IFMs is not a service under MiFID. IFMs and their UCIs are therefore exempted from the scope of MiFID under article 1-1 (2) (i) of the Law of 1993 / article 2 (1) (i) of MiFID when performing the functions included in the collective portfolio management themselves. However, the exemption does not cover the functions of collective portfolio management:

- undertaken by an authorised IFM under a delegation arrangement (the “delegate IFM”) from another authorised IFM or,
- delegated by an authorised IFM to a third party (the “third-party delegate”).

Q10.3 When does the service rendered by third parties to IFMs fall within the scope of MiFID?

A10.3 When an IFM does not perform all the functions of the collective portfolio management itself or uses the service of a third-party delegate, the exemption foreseen under article 1-1 (2) (i) of the Law of 1993 / article 2 (1) (i) of MiFID does not apply to such third-party delegate.

In such a circumstance, the IFM gives a mandate to a third-party delegate to execute on its behalf the relevant activity. Thus, the IFM becomes a client of this third-party delegate and the third-party delegate may be subject to the MiFID rules if:

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a) the service rendered qualifies as an investment service or an activity under Annex II of the Law of 1993 / Annex I of MiFID; and,
b) the service relates to transactions on financial instruments as defined under section B of Annex II of the Law of 1993 / section C Annex I of MiFID; and,
c) the service is rendered by a third party established in the EU or is considered to be rendered in Luxembourg by a third party established outside of the EU as further clarified by the CSSF in Part III of Circular CSSF 19/716.

Q10.4 Do MiFID rules apply to the performance of functions included in the collective portfolio management by another delegate IFM?

A10.4 Where an IFM delegates the performance of one or several functions included in the collective portfolio management to another IFM, the exemption foreseen under article 1-1 (2) (i) of the Law of 1993 / article 2 (1) (i) of MiFID does not apply to the delegate IFM.

In such case, the delegate IFM, must in principle, depending on the tasks performed, be authorised to provide discretionary portfolio management and non-core services foreseen under article 101 (3) of the Law of 2010 or under article 5 (4) of the Law of 2013 such as investment advice, administration of units of UCIs or, for authorised AIFM, reception and transmission of orders ("RTO").

Those delegate IFMs are not subject to the full scope of MiFID rules, only articles 1-1, 37-1 and 37-3 of the Law of 1993 / articles 15, 16, 24 and 25 of MiFID, apply. The delegate IFMs are not authorised to provide other MiFID services or activities than those covered under article 101 (3) of the Law of 2010 or under article 5 (4) of the Law of 2013.

Q10.5 Do MiFID rules apply to the marketing of funds?

A10.5 Marketing of funds is part of the functions included in the collective portfolio management. Consequently, if the authorisation of an IFM includes the marketing function, the IFM can perform the marketing for the funds under its management ("direct marketing").

If the IFM does not perform the marketing function itself, the exemption foreseen under article 1-1 (2) (i) of the Law of 1993 / article 2 (1) (i) of MiFID does not apply and MiFID rules may apply to the entity undertaking the marketing function depending on where and to whom the funds are distributed.

Q10.6 Do MiFID rules apply when an IFM delegates the marketing to another IFM?

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A10.6 If an IFM does not operate the activity of marketing by itself, the exemption foreseen under article 1-1 (2) (i) of the Law of 1993 / article 2 (1) (i) of MiFID does not apply.

Any Luxembourg IFM that markets funds that it does not directly manage on behalf of another IFM, acts as an intermediary as any investment firm covered by MIFID and must therefore be authorised under article 101 (3) of the Law of 2010 or under article 5 (4) of the Law of 2013, depending on the type of fund and services offered, namely:

- discretionary portfolio management and,
- investment advice relating to UCIs or/and,
- safekeeping and administration of UCIs or,
- for authorised AIFMs, RTO relating to UCIs.

In such case, articles 1-1, 37-1 and 37-3 of the Law of 1993 / articles 15, 16, 24 and 25 of MiFID, will be applicable to the Luxembourg IFM. EU IFMs marketing on behalf of another IFM, in Luxembourg, funds that they do not manage directly, must be authorised under article 6 (3) of the UCITS Directive or under article 6 (4) of the AIFM Directive.

Q10.7 Which MiFID investment services may be considered as marketing of funds?

A10.7 The marketing of funds is not an investment service “per se” under MiFID as it is not part of the list of services and activities included in sections A and C Annex II of the Law of 1993 / sections A and B of Annex I of MiFID. However, the following MiFID services may be used for the distribution of funds:

- Reception and transmission of orders relating to UCIs;
- Execution of orders on behalf of clients;
- Dealing on own account;
- Portfolio management;
- Investment advice;
- Underwriting and/or placing of UCIs on a firm commitment basis;
- Placing of UCIs without a firm commitment basis.

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Q10.8 Is investment advice included in the activity of collective portfolio management?

A10.8 No. Investment advice is not listed in the functions included in the activity of collective portfolio management under Annex II of the Law of 2010 or Annex I of the Law of 2013.

Q10.9 Do MiFID rules apply to investment advisors when they provide investment advice to an IFM?

A10.9 Yes. As per article 9 of MiFID delegated regulation 2017/565, investment advice given to an IFM that enable to take an investment decision, qualify as personal recommendations issued to a client under MiFID as the recommendations are not issued exclusively to the public.

Consequently, third parties that provide investment advice relating to financial instruments as defined under section B of Annex II of the Law of 1993 / section C Annex I of MiFID, to UCI/IFM, to an IFM, are in principle subject to MiFID rules.

Q10.10 Are IFMs authorised to provide investment advice to another IFM?

A10.10 No, except if the IFM is also authorised under article 101 (3) b) of the Law of 2010 or under article 5 (4) (b) (i) of the Law of 2013, to provide investment advice.

Q10.11 Which MiFID exemptions may apply to third parties providing investment services to IFM?

A10.11 The third parties providing investment services to IFMs may benefit from the following exemptions:

a) Specific exemptions under the Law of 1993/MiFID:

- Intragroup service exemption under article 1-1 (2) (b) and (c) of the Law of 1993 / article 2 (1) (b) of MiFID.
- Service complementary to their professional activities as foreseen under article 1-1 (2) (d) of the Law of 1993 / article 2 (1) (c) of MiFID.
- Investment advice not specifically remunerated rendered in the course of providing another professional activity not covered by MiFID under article 1-1 (2) (l) of the Law of 1993 / article 2 (1) (k) of MiFID.

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b) Partial exemption from MiFID rules:

- Authorised EU IFM rendering discretionary portfolio management and non-core services under article 101 (3) of the Law of 2010 / article 5 (4) of the Law of 2013 are subject to articles 1-1, 37-1 and 37-3 of the Law of 1993 / articles 15, 16, 24 and 25 of MiFID.

In any case, the third parties must be able to demonstrate that they fall within the scope of an exemption, should they provide services without an authorisation under the MIFID applicable framework.

15-Jun-21: The CSSF updated the FAQ (Part II) on the statuses of PFS with respect to the granting of loans to the public.

https://www.cssf.lu/wp-content/uploads/FAQ_PSF_II_eng.pdf

Q52 What does the activity requiring the status of professional performing lending operations consist of and to whom does this status apply?

A52:

a. Refinancing

The status of "professional carrying on lending operations" governed by Article 28-4 of the LFS consists in granting loans, for their own account, to the public. Unlike the activity of a credit institution, it does not allow collecting savings from the public, in any form whatsoever, for refinancing purposes.

Indeed, the activity of a credit institution cannot be defined only by the use of its resources, i.e. granting loans, but also by the origin of these resources, i.e. receiving deposits or other repayable funds from the public. Since no other than a credit institution is allowed to carry out the business of taking deposits or other repayable funds from the public, the PFS referred to in Article 28-4 of the LFS shall refinance themselves exclusively through other means and notably within their group or on the inter-bank market.

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b. Exclusions from the scope of Article 28-4

The text of Article 28-4(3) specifies that, as need be, Article 28-4 of the LFS does not concern the persons that refinance themselves through securitisation operations. These persons are governed by the law on securitisation.

Likewise, the PFS status governed by Article 28-4 of the LFS does not cover the activities exclusively reserved to banks issuing mortgage bonds. The professionals concerned are thus not allowed refinancing themselves by issuing debt instruments known as mortgage bonds based on rights in rem in immoveable property or charges on real property guaranteeing the mortgage loans they are granting.

Besides securitisation undertakings and banks issuing mortgage bonds, neither Article 28-4 nor the LFS itself, apply to professionals excluded from the scope of the LFS in accordance with its Article 1-1(2), including notably UCIs, SIFs, pension funds, SICARs and any other persons carrying out an activity the taking up and pursuit of which are governed by special laws.

c. Granting of loans to the public

By definition, the professional activity of a “professional carrying on lending operations” governed by Article 28-4 of the LFS consists in granting, for its own account, loans to the public. In that respect, it should be noted that the aforementioned non-application of Article 28-4 of the LFS (concerning securitisation undertakings, banks issuing mortgage bonds, as well as the professionals excluded from the scope of the LFS in accordance with its Article 1-1(2), including notably UCIs, SIFs, pension funds, SICARs and any other persons carrying out an activity the taking up and pursuit of which are governed by special laws) also applies where these regulated entities grant loans through a Luxembourg SPV they hold at 100% or they directly or indirectly control (look-through approach).

The reference to the professional character of the credit activity implies that it is performed repetitively and that unique or one-off credit operations are neither governed by Article 28-4 of the LFS, nor by the LFS in general. The reference to the public, in addition to the principle of “group exception” laid down in Article 1-1(2) of the LFS, also implies that neither Article 28-4 of the LFS nor the LFS in general apply to professionals that grant loans exclusively to one or several companies belonging to the group to which they belong themselves.

Apart from the aforementioned exceptions, the CSSF stresses that under the terms of Article 14 of the LFS, no person may have as their regular occupation or business activity a financial sector activity without prior written authorisation of the Minister responsible for the CSSF and that granting loans is such an activity.

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The concept of public generally refers to a multitude of non-identifiable persons. That is why the CSSF considers that, where loans are granted to a limited circle of previously determined persons, they are not granted to the public and the concerned lending activity does thus not fall within the scope of Article 28-4 of the LFS. This is also true where loans are granted through a Luxembourg SPV and granted to a limited circle of previously determined persons by the entity that holds the SPV at 100% or directly or indirectly controls it.

Moreover, the CSSF considers that a credit activity is not aimed at the public within the meaning of Article 28-4 of the LFS, where (i) the nominal value of the loan amounts to EUR 3,000,000 at least (or the equivalent amount in another currency) and (ii) the loans are granted exclusively to professionals such as defined in Article L. 010-1.2) of the Consumer Code.

d. Prior information of the CSSF

As credit activities are developing outside traditional banking circuits (shadow banking), regulatory authorities are required to pay attention to these activities as well, notably where they imply a maturity transformation risk or where the professional uses leverage.

The CSSF has recently seen credit origination operations, operations consisting in acquiring drawn or undrawn credit lines and transfers of loans contracted simultaneously with or immediately after the loans were granted by a credit institution. Without questioning their legal validity, the CSSF considers that these operations may be lending operations and, therefore likely to fall within the scope of the LFS.

Where the applicability of Article 28-4 of the LFS cannot be excluded by way of the explanations provided above, the persons contemplating to grant or acquire loans are invited to submit to the CSSF a detailed description of the activities envisaged, allowing the CSSF to determine whether or not the activities carried out are subject to an authorisation.

e. Lending operations concerned

Article 28-4 of the LFS applies to all types of loans granted to the public, including mortgage loans and, subject to Article 28-4(3) (cf. Question 55), consumer credits, whether or not the loans are secured.

Leasing operations (cf. Question 53) and factoring operations (cf. Question 54) are lending operations within the meaning of Article 28-4 of the LFS insofar as they include a credit element. However, besides these two types of operations mentioned in the LFS, other activities may also be considered as lending operations.

ESMA Q&A Updates (1 of 3)

28-May-21: ESMA published a revised version of both its Q&A on application of AIFMD and its Q&A on application of UCITS Directive.

https://www.esma.europa.eu/sites/default/files/library/esma34-32-352_qa_aifmd.pdf

New Q&As on AIFMD:

Q84: Which risk is measured by NET DV01? How shall it be reported?

A84: Net DV01 should be the value change in price (value) of a portfolio and measures the portfolio's sensitivity to a change in the yield curve. Assume an increase of 1bp in the risk-free rate curve (assume a parallel shift) at the end of the reporting period. The effect on the total net asset value of the AIF (taking into account all the positions (including derivative positions) of the portfolio) shall be reported as a monetary value in base currency for each maturity bucket (< 5 years, 5-15 years and >15 years) as specified in data fields 140-142. Report: (i) a negative value if the variation of the net asset value is negative; (ii) a positive value if the variation is positive and (iii) a zero if the AIF is neutral or not exposed at all to this risk. In case a measure of risk is not applicable for an AIF or when AIFM report a zero value, the reasons should be explained in the "Risk Measure Description" (data field 147). As indicated in the Guidelines, DV01 is defined as in ISDA definition. For example, assume an AIF with NAV of 100M EUR encountering the following portfolio decline after a general increase of 1bp in the risk-free yield curve: 0.01%, decline for maturity bucket 15 years. Then for these maturity buckets it should report, in base currency, respectively: "-10000", "-20000" and "-30000".

Q85: Which risk is measured by NET CS01? How shall it be reported?

A85: Net CS01 measures the portfolio's sensitivity to a change in credit spreads. Assume a general increase in all credit spreads of 1bp at the end of the reporting period. The effect on the total net asset value of the AIF (taking into account all the positions (including derivative positions) of the portfolio) should be reported as a monetary value in base currency for each maturity bucket (< 5 years, 5-15 years and >15 years) as specified in data fields 140-142. Report: (i) a negative value if the variation of the net asset value is negative; (ii) a positive value if the variation is positive and (iii) a zero if the AIF is neutral or not exposed at all to this risk. In case a measure of risk is not applicable for an AIF or when AIFM report a zero value, the reasons should be explained in the "Risk Measure Description" (data field 147). As indicated in the Guidelines, CS01 is defined as in ISDA definition. For example, assume an AIF with NAV of 100M EUR encountering the following portfolio decline after a general increase of 1bp in all credit spreads: 0.01%, decline for maturity bucket 15 years. Then for these maturity buckets it should report, in base currency, respectively: "- 10000", "-20000" and "-30000".

ESMA Q&A Updates (2 of 3)

Q86: Which risk is measured by Net Equity Delta? How shall it be reported?

A86: Net equity delta is used to analyse portfolio's sensitivity to movements in equity prices. Assume all equity prices the AIF is exposed to decline by 1% at the end of the reporting period. Report the effect on the total net asset value of the AIF (taking into account all the positions (including derivative positions) of the portfolio) as a monetary value in base currency. In the case of derivative positions, a decline of 1% in the value of the underlying should be considered, and not in the value of the derivative. Hence, it shall report: (i) a negative value if the variation of the net asset value is negative; (ii) a positive value if the variation is positive and (iii) a zero if the AIF is neutral or not exposed at all to this risk. In case a measure of risk is not applicable for an AIF or when AIFM report a zero value, the reasons should be explained in the "Risk Measure Description" (data field 147).

Example:

i. Assume at the quarter-end that the NAV sensitivity of an AIF to a 1% equity price decline is -0.5% and that its NAV is 100M EUR, then the figure to be reported under the field "net equity delta" would be "-500000".

ii. Assume the AIF is fully exposed to fixed-income instruments, then a zero would be reported under the field "net equity delta" and "Not applicable given AIF's predominant type" would be reported in the Risk Measure Description field (147).

ESMA Q&A Updates (3 of 3)

https://www.esma.europa.eu/sites/default/files/library/esma34-43-392_qa_on_application_of_the_ucits_directive.pdf

New Q&As on UCITS Directive:

Section VIII

Q3: Based on paragraph 40 of the Guidelines on performance fees, how should the performance reference period for the benchmark model be set?

A3: Paragraph 40) of the guidelines recommends that:

1. Any underperformance of the fund compared to the benchmark index should be clawed back before any performance fee becomes payable; and

2. The length of the performance reference period, if this is shorter than the whole life of the fund, should be set equal to at least 5 years.In order to comply with the above recommendations, it should be ensured that any underperformance is brought forward for a minimum period of 5 years before a performance fee becomes payable, i.e. fund managers should look back at the past 5 years for the purpose of compensating underperformances.

In case the fund has overperformed the benchmark index, the fund manager should be able to crystallise performance fees.

Q4: How should the performance reference period be set in case of a merger where the receiving UCITS is a newly established fund with no performance history and it is in effect a continuation of the merging UCITS?

A4: In order to ensure that the merger is not conducted with the aim of resetting the performance reference period, in the case of a merger where the receiving UCITS is a newly established fund with no performance history and the competent authority of the receiving UCITS assesses that the merger does not substantially change the UCITS's investment policy, the performance reference period of the merging UCITS should continue applying in the receiving UCITS.

MiFID & MiFIR (1 of 2)

1-Apr-21: ESMA proposes extending MiFIR transaction reporting to management companies providing MiFID services.

https://www.esma.europa.eu/sites/default/files/library/esma74-362-1013_final_report_mifir_review_-_data_reporting.pdf

Concretely, to ensure a level playing field between MiFID investment firms and AIFM/UCITS management companies, ESMA has proposed to extend the scope of reporting requirements under Article 26 of MiFIR to UCITS and AIFM firms if they provide at least one MiFID service to third parties.

Therefore, the proposed change should only affect AIFM/UCITS management companies providing one or more MiFID services that would trigger the obligation to report transactions under Article 26 of MiFIR. The proposed change will not cover transactions stemming from other activities conducted by AIFM/UCITS firms.

Further, ESMA proposes additional adjustments to the reporting framework that are specifically relevant to trading venues, systematic internalizers, investment firms, data reporting service providers, including:

- The replacement of the trading on a trading venue (TOTV) concept with the systematic internalizer (SI) approach for over-the-counter (OTC) derivatives;
- The removal of the short sale indicator;
- The alignment with reporting regimes such as the Market Abuse Regulation (MAR), the European Market Infrastructure Regulation (EMIR) and the Benchmark Regulation;
- The reliance on international standards, including legal entity identifiers (LEIs), international securities identification numbers (ISINs) and classification of financial instruments (CFIs); and
- The inclusion of three additional data elements to harmonize the way they are reported and avoid inconsistent and duplicate reporting of the same information at the national level. In particular, these are indicators for:
    - Buyback programs;
    - Information on MiFID II client categories; and
    - Transactions pertaining to aggregated orders.

To this end, the European Commission is expected to adopt legislative proposals based on these recommendations. ESMA is ready to provide any additional technical advice on the legislative amendments suggested in the report.

MiFID & MiFIR (2 of 2)

10-Jun-21: The CSSF published an FAQ on the application of the MiFID to investment fund managers.

On 10 June 2021, the CSSF published an FAQ on the application of MiFID to Luxembourg IFMs. This CSSF FAQ aims at clarifying under what circumstances and to what extent MiFID applies to IFMs, their third-party delegates and their investment advisers.

The new FAQ has been included in the following CSSF FAQ:

FAQ concerning the Luxembourg Law of 17 December 2010 relating to undertakings for collective investment, section 10:

https://www.cssf.lu/wp-content/uploads/FAQ_Law_17_December_2010.pdf

FAQ concerning the Luxembourg Law of 12 July 2013 on alternative investment fund managers, section 26:

https://www.cssf.lu/wp-content/uploads/FAQ_AIFMD.pdf

IFMs are expected to comply with the CSSF FAQ as soon as possible and by 31 December 2021 at the latest, considering the best interests of investors.

Consequently, IFMs should as soon as possible analyse their organisation model in order to assess:

- the need for an authorisation to provide services under Article 101 (3) of the Law of 17 December 2010 or under Article 5 (4) of the Law of 12 July 2013;
- appropriate compliance, by any third country entity acting as their delegate or undertaking services on their behalf, with the third country regime as foreseen under Circular CSSF 19/716 as amended by Circular CSSF 20/743 on the provision in Luxembourg of investment services or performance of investment activities and ancillary services in accordance with Article 32-1 of the Law of 5 April 1993 on the financial sector.

EMIR & SFTR (1 of 4)

15-Apr-21: ESMA published for the first time its “Data Quality Report” to highlight its supervisory activities regarding the quality of data reported to Trade Repositories under EMIR and SFTR.

https://www.esma.europa.eu/sites/default/files/library/esma80-193-1713_emir_and_sftr_data_quality_report.pdf

ESMA published for the first time its “Data Quality Report” to highlight its supervisory and supervisory convergence activities regarding the quality of data reported to Trade Repositories (TRs) under the European Market Infrastructure Regulation (EMIR) and under the Securities Financing Transactions Regulation (SFTR). This report aims to provide an overview of the state of play under the two reporting regimes, while also providing insights to national competent authorities (NCAs’) and ESMA’s ongoing efforts to improve the quality of the data.

EMIR and SFTR establish a supervisory framework with complementary supervisory responsibilities (i.e. NCAs supervise the reporting counterparties and ESMA supervises the TRs). The joint efforts by NCAs and ESMA to improve the quality of EMIR and SFTR data are embedded in various frameworks. This report outlines key frameworks (Data Quality Action Plan and Data Quality Assessment Framework) and processes (Data Quality Review and EMIR and SFTR data quality log) established at the European level to monitor data quality on an ongoing basis and to ensure adequate supervisory engagement with the supervised entities, namely TRs and reporting counterparties. Based on the positive results obtained in the most recent Data Quality Review, this report also emphasises the need for an increased supervisory focus on key data reporting aspects where improvement is still needed. ESMA also underlines the need for increased cooperation with data users to further enhance the detection and remediation of data quality issues based on feedback from users.

In short, this report aims to provide an overview of the state of data quality under the two reporting regimes, while also providing insights on NCAs’ and ESMA’s ongoing efforts to improve the quality of the data and, in turn, to support their use for financial market stability and integrity monitoring.

ESMA has been using EMIR and SFTR data to monitor and detect data quality issues since inception. For this purpose, ESMA has developed a dedicated framework (the Data Quality Assessment Framework) and an extensive suite of analytical tools and indicators. Given the complexity of the reported data, e.g. EMIR and SFTR both have more than 100 reportable fields and TRs report to ESMA 10s of millions of records daily, and the importance of the reporting obligation, the supervision of this data requires the use of advanced tools and techniques to adequately process and analyse such data.

To this end, this report presents, for the first time, an overview of selected data quality metrics used by ESMA to assess the data quality of regulatory reporting and the subsequent report generation by TRs. While this first edition only provides a restricted number of data quality metrics, the scope will be enlarged in future editions.

EMIR & SFTR (2 of 4)

20-May-21: ESMA published updated Q&A both on EMIR and on SFTR data reporting.

https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-52_qa_on_emir_implementation.pdf

Amended Q&A on EMIR:

Q53: Article 9(1) of EMIR – Reporting of reference rates not included in Regulation (EU) 2017/105 To ensure consistency of reporting Following to the creation of a new reference rate €STR, it is important to clarify how the counterparties should report derivatives based on this rate, as well as derivatives based on other reference rates that are not included explicitly in the Regulation (EU) 2017/105, such as €STR. In particular: (a) How the fields related to floating rate should be populated? (b) How the fields related to underlying should be populated? (c) Specifically, in the case of outstanding derivative contracts referencing EONIA, should the counterparties report to the TRs when change the reference rate from EONIA to €STR? How the counterparties should report in other similar scenarios, e.g. in the case of transition from LIBOR to risk free rates? (d) In the case of derivatives that are identified with an ISIN, should the counterparties modify also the field 2.6 Product ID?

A53: (a) At the time the Regulation (EU) 2017/105 was developed, €STR was not yet available, therefore the list of standardised codes for reporting of floating rate specified in this Regulation (for the fields 2.55 Floating rate of leg 1 and 2.58 Floating rate of leg 2) does not provide the code for reporting of this reference rate. Consequently, the counterparties need to use the free-text field to report €STR. In order to ensure consistent reporting and enable the reconciliation of the reports in question, counterparties should report in the free-text field “ESTR”, i.e. the 4-letter code assigned to €STR in the ISO 20022 standard.
Similarly, for other reference rates that are not included in the list of standardised codes, counterparties should report in the free-text field the 4-letter code assigned to that reference rate is the ISO 20022 standard, to the extent it is available, as described in ISO 20022 Benchmark Curve Name Code at the following link. (b) In the case of field 2.8 Underlying identification, counterparties should report ISIN assigned to a given rate, e.g. in the case of €STR it is “EU000A2X2A25”. If ISIN is not available for a given rate, the counterparties should report the full name of that index as assigned by the index provider. It should be noted that the field 2.7 Underlying identification type should be populated with the value “X” standing for “Index”. (c) Yes. When the counterparties agree to change the reference index of the outstanding derivative contract from EONIA to €STR, they need to send the report with action type “Modify” to the trade repository. Similarly, once EONIA is discontinued, the counterparties that either actively transition to €STR or rely on the contractual fallback, will need to send the modification reports to the TRs. The same approach should be applied in the case of other changes of the reference rates of the derivative. For example, in the case of LIBOR cessation the counterparties should report a modification of the derivative when the fallbacks are triggered. It should be noted that once the fallback is triggered, from the economic perspective the derivative is based on the fallback rate, thus the counterparty should report the modification (and update the relevant fields) even if the reference to LIBOR is maintained in the legal contract. (d) Yes. Given that the derivative based on the fallback rate will be assigned a different ISIN than the equivalent derivative based on LIBOR, the counterparties should update the ISIN of the derivative when switching to a different rate.

EMIR & SFTR (3 of 4)

New Q&A on EMIR:

Q58: Reporting of the field ‘Delivery type’ for Credit derivatives (a) The field 2.24 ‘Delivery Type’ allows for the values “C” (‘Cash’), “P” (‘Physical’) and “O” (‘Optional for counterparty or when determined by a third party’). How should a counterparty report the field ‘Delivery type’ for credit derivatives, in particular in the case of credit event auction?

A58: (a) Auctions are organised, and counterparties may subscribe to it only once a given credit event occurs. Thus, at the time of concluding the derivative it is not known whether the counterparties would participate in an auction. Furthermore, the credit protection buyer/seller may subscribe to the credit event auction individually, meaning that not necessarily both counterparties to the derivative would participate in the auction. While the underlying instruments can be sold and physically delivered in the auction, the actual credit derivative would be cash-settled (as one counterparty, protection buyer, would receive from the other counterparty the cash compensation for the non-retrievable part of the underlying instruments and they would not have exchanged the underlying). Therefore, the counterparties should report “C” (‘Cash’) in the field ‘Delivery type’ for credit derivatives that are cash-settled, including where one or both counterparties subscribe to a credit event auction.

For the avoidance of doubt, the counterparties should report “P” (‘Physical’) in the case of physical delivery of the underlying of the credit derivative from the counterparty that is protection buyer to the other counterparty.

EMIR & SFTR (4 of 4)

https://www.esma.europa.eu/sites/default/files/library/esma74-362-893_qas_on_sftr_data_reporting.pdf

New Q&A on SFTR:

Q10: Reporting of changes to the reference rate in an SFT To ensure consistency of reporting of SFTs, it is important to clarify how the counterparties should report SFTs based on reference rates that are not included explicitly in the Commission Implementing Regulation (EU) 2019/363, such as €STR. In particular:

(a) How the counterparties should report the changes to the reference rate in an SFT? In particular, how such changes should be reported in the scenario when, following to the benchmarks reform, the counterparties agree to switch to a different rate or when a fall-back is triggered?

(b) How the counterparties should report SFTs based on reference rates that are not included explicitly in the Commission Implementing Regulation (EU) 2019/363, for example €STR?

A10:

(a) In all such cases the counterparties should report a modification of an SFT and update the relevant fields, 2.25 Floating rate or 2.59 Floating rebate rate, as applicable.

(b) At the time the Commission Implementing Regulation (EU) 2019/363 was developed, €STR was not yet available, therefore the list of standardised codes for reporting of floating rate specified in this Regulation (for the fields 2.25 Floating rate and 2.59 Floating rebate rate) does not provide the code for reporting of this reference rate. Consequently, the counterparties need to use the free-text field to report €STR. In order to ensure consistent reporting and enable the reconciliation of the reports in question, counterparties should report in the free-text field "ESTR", i.e. the 4-letter code assigned to €STR in the ISO 20022 standard. Similarly, for other reference rates that are not included in the list of standardised codes, counterparties should report in the free-text field the 4-letter code assigned to that reference rate is the ISO 20022 standard, to the extent it is available, as described in ISO 20022 Benchmark Curve Name Code at the following link:

https://www.iso20022.org/standardsrepository

Data Protection

4-Jun-21: The EC adopted the Standard Contractual Clauses (SCCs), i.e. sets of standardized contractual terms, conditions and obligations that aim to ensure the transfer of personal data leaving the EU/EEA complies with the EU's data privacy laws and requirements.

https://ec.europa.eu/info/law/law-topic/data-protection/international-dimension-data-protection/standard-contractual-clauses-scc_en

The Standard Contractual Clauses (SCCs) are sets of standardized contractual terms, conditions and obligations that aim to ensure the transfer of personal data leaving the EU/EEA complies with the EU's data privacy laws and requirements.

On 4 June 2021, the European Commission adopted a new set of SCCs to align them with the requirements of the General Data Protection Regulation (GDPR), market practices that have changed in the past 20 years, and the Court of Justice of the European Union's (CJEU) "Schrems II" ruling.

All entities that transfer personal data outside of the EU/EEA using the current SCCs will need to use the new SCCs within the next few months, requiring them to provide additional information and perform a risk assessment.

As per Luxembourg National Commission for Data Protection (CNPD), the Controller-Processor SCCs will have an EU-wide effect and aim to ensure full harmonisation and legal certainty across the EU when it comes to contracts between controllers and their processors.

Companies, public bodies and associations based in Luxembourg that use processors from Luxembourg or other EU countries can use these SCCs as "contract templates" to be signed with their processors in order to comply with their processor obligations. However, they remain free to sign contracts not based on these SCCs, provided they comply with the requirements of Article 28(3) GDPR.

ESG (1 of 3)

21-Apr-21: The EC adopted delegated legislation integrating sustainability into AIFMD and UCITS Directive.

(i) COMMISSION DELEGATED REGULATION (EU) …/... of 21.4.2021 amending Delegated Regulation (EU) No 231/2013 as regards the sustainability risks and sustainability factors to be taken into account by Alternative Investment Fund Managers

https://ec.europa.eu/finance/docs/level-2-measures/aifmd-delegated-act-2021-2615_en.pdf

As per its publication by the EC, this new Regulation is based on a Final Report on technical advice by the European Securities and Markets Authority (ESMA). The technical advice concludes that further clarifications are needed in respect of the integration of sustainability risks and sustainability factors in Regulation 231/2013 and identifies specific provisions in this respect. This Regulation clarifies the current obligation of AIFMs to integrate sustainability risks. The clarification does not introduce ranking amongst different risks. This Regulation also clarifies some of implications of Regulation on sustainability-related disclosures in the financial services sector, namely where AIFMs disclose information with regard to the consideration of adverse sustainability impacts. This Regulation and other sectoral delegated acts that adapt rules on fiduciary duties and suitability tests further reinforce Regulation on sustainability-related disclosures in the financial services sector, Regulation on the EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks and Regulation on the EU taxonomy for sustainable activities. These rules integrate sustainability considerations into the investment, advisory and disclosure processes in a consistent manner across sectors. They anchor environmental, social and governance (sustainability) considerations at the heart of the financial system to help transform Europe's economy into a greener, low-carbon, more resilient, resource-efficient and circular system.

This Regulation covers the following amendments to Delegated Regulation (EU) 231/2013:

Article 1(1) lays down a definition of ‘sustainability risks’ that is aligned with the definition of ‘sustainability risks’ in point (22) of Article 2 of Regulation (EU) 2019/20889. Article 1(2) includes the consideration of sustainability risks either in qualitative or quantitative terms in due diligence requirements under Article 18 of Delegated Regulation (EU) 231/2013. Where AIFMs consider principal adverse impacts of investment decisions on sustainability factors, due diligence requirements must also take due account of them. Article 1(3) requires AIFMs to retain the necessary resources and expertise for the effective integration of sustainability risks, by amending Article 22 of Delegated Regulation (EU) 231/2013. Article 1(4) lays down that the identification of conflicts of interest must also include those conflicts of interest that may arise as a result of the integration of sustainability risks. Article 1(5) clarifies that the risk management policy under Article 40 of Delegated Regulation (EU) 231/2013 must also consider exposures of Alternative Investment Funds to sustainability risks. Article 1(6) integrates in general requirements laid down in Article 57(1) of Delegated Regulation (EU) 231/2013 the obligation of management AIFMs to consider sustainability risks. Article 1(7) ensures that senior management of the AIFM is responsible for the integration of sustainability risks.

ESG (2 of 3)

(ii) COMMISSION DELEGATED DIRECTIVE (EU) .../… of 21.4.2021 amending Directive 2010/43/EU as regards the sustainability risks and sustainability factors to be taken into account for Undertakings for Collective Investment in Transferable Securities (UCITS)

https://ec.europa.eu/finance/docs/level-2-measures/ucits-directive-delegated-act-2021-2617_en.pdf

This new Directive is based on a Final Report on technical advice by the European Securities and Markets Authority (ESMA). The technical advice concludes that further clarifications are needed in respect of the integration of sustainability risks and sustainability factors in Directive 2010/43/EU and identifies specific provisions in this respect. This Directive clarifies the current obligation of undertakings for collective investment in transferable securities (UCITS) to integrate sustainability risks. The clarification does not introduce ranking amongst different risks. This Directive also clarifies some of implications of Regulation on sustainability-related disclosures in the financial services sector, namely where management companies of UCITS disclose information with regard to the consideration of adverse sustainability impacts. This Directive and other sectoral delegated acts that adapt rules on fiduciary duties and suitability test further reinforce Regulation on sustainability-related disclosures in the financial services sector, Regulation on the EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks and Regulation on the EU taxonomy for sustainable activities. These rules integrate sustainability considerations into the investment, advisory and disclosure processes in a consistent manner across sectors. They anchor environmental, social and governance (sustainability) considerations at the heart of the financial system to help transform Europe's economy into a greener, low-carbon, more resilient, resource-efficient and circular system.

This Directive covers the following amendments to Directive 2010/43/EU:

Article 1(1) lays down a definition of ‘sustainability risks’ that is aligned with the definition of ‘sustainability risks’ in point (22) of Article 2 of Regulation (EU) 2019/2088. Article 1(2) integrates in the first subparagraph Article 4(1) of Directive 2010/43/EU on general requirements on procedures and organisation the obligation addressed to management companies to consider sustainability risks. Article 1(3) requires management companies to retain the necessary resources and expertise for the effective integration of sustainability risks, by amending Article 5 of Directive 2010/43/EU. Article 1(4) sets out investment companies integrate sustainability risks, taking into account the principle of proportionality. Article 1(5) ensures that senior management of the management company is responsible for the integration of sustainability risks. Article 1(6) lays down that the identification of conflicts of interest must also include those types that may arise as a result of the integration of sustainability risks. Article 1(7) includes the consideration of sustainability risks either in qualitative or quantitative terms in due diligence requirements under Article 23 of Directive 2010/43/EU. Where management companies, or, where applicable, investment companies, consider principal adverse impacts of investment decisions on sustainability factors, due diligence requirements must also take due account of them. Article 1(8) clarifies that the risk management policy under Article 38 of Directive 2010/43/EU must also consider exposures of UCITS to sustainability risks.

ESG (3 of 3)

21-Jun-21: The CSSF published Circular CSSF 21/773, a new guidance on the management of climate-related and environmental risks.

https://www.cssf.lu/wp-content/uploads/cssf21_773eng.pdf

The purpose of this circular on the management of climate-related and environmental risks (hereafter the “Circular”) is to raise credit institutions’ awareness on the need to consider and assess climate-related and environmental risks and to increase awareness of members of the management body and institutions’ staff about these risks.

It describes how the CSSF expects credit institutions to consider and integrate into their operations climate-related and environmental risks, as drivers of existing categories of risks. These expectations are most relevant when credit institutions formulate and implement their business strategy, governance and risk management frameworks. They are part of the wider regulatory developments regarding sustainability considerations. The expectations in this Circular are consistent with the ECB’s “Guide on climate-related and environmental risks” dated November 2020 and the “Guide for Supervisors: integrating climate-related and environmental risks into prudential supervision” published in May 2020 by the Network of Central Banks and Supervisors for Greening the Financial System (NGFS).

The Circular applies to all credit institutions designated as Less Significant Institutions under the Single Supervisory Mechanism and to all branches of non-EU credit institutions (hereafter “Institutions”).

While the CSSF recognises the challenges that smaller Institutions may face in assessing the impacts of climate-related and environmental risks, it should be stressed that the size of an Institution does not directly determine or correlate to the material nature of the risks that it faces. Institutions shall duly consider the expectations in the Circular in a proportionate manner, taking into account the materiality of their exposure to risks arising from climate change and other environmental factors.

This Circular is applicable as of its date of publication. The CSSF expects Institutions to start reviewing their current business models and operational frameworks by mid-year 2021 with a view to progressively implement operational arrangements that incorporate climate-related and environmental risk factors.

Funds Distribution (1 of 2)

27-May-21: ESMA published its final report on the Guidelines under the Regulation (EU) 2019/1156 on cross-border distribution of funds.

https://www.esma.europa.eu/sites/default/files/library/esma34-45-1244_-_final_report_on_the_guidelines_on_marketing_communications.pdf

These guidelines apply to UCITS management companies, including any UCITS which has not designated a UCITS management company, Alternative Investment Fund Managers, EuVECA managers and EuSEF managers. These guidelines apply 6 months after the date of the publication of the guidelines on ESMA's website in all EU official languages.

The purpose of these guidelines is to specify the application of the requirements for marketing communications set out in Article 4(1) of the Regulation (EU) 2019/1156. In particular, they establish common principles on the identification as such of marketing communications, the description of risks and rewards of purchasing units or shares of an AIF or units of a UCITS in an equally prominent manner, and the fair, clear and not-misleading character of marketing communications, taking into account on-line aspects of such marketing communications.

However, the Guidelines do not intend to replace existing national requirements on the information to be included in marketing communications (such as those relating to the fiscal treatment of the investment in the promoted fund) to the extent these are compatible with any existing harmonised EU rules (e.g. rules on disclosure of costs or performance in the KIID should not be contradicted or diminished by different national disclosure requirements on costs or performance in marketing communications).

The Guidelines provide guidance as to the interpretation of these requirements and include examples on the types of marketing communications which may be considered in scope of the Regulation, precisions on the identification of marketing communications as such, and specifications of requirements related to the suitability towards targeted investors, consistency with other funds documents, as well as descriptions of investment performances, risks, rewards and costs linked to them.

The date of application of the Guidelines is set to 6 months following the translation into and publication on ESMA's website in all EU official languages.

Funds Distribution (2 of 2)

15-Jun-21: Commission Implementing Regulation (EU) 2021/955, laying down technical standards under the Cross-Border Distribution Regulation, has been published in the Official Journal of the EU.

https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX%3A32021R0955&from=EN

The Commission Implementing Regulation pointed out technical standards concerning the publication of information by Member State national competent authorities on their websites regarding the national rules for marketing requirements for funds, and the fees and charges levied by such competent authorities. The technical standards also deal with the forms, templates and procedures for communicating such information to the European Securities and Markets Authority so that it may develop and maintain a central database listing UCITS and alternative investment funds marketed cross-border.

In the past, ESMA has conducted open public consultations on the provisions of the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits, and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council.

However, ESMA has not consulted on the draft implementing technical standards that specify the standard forms, templates and procedures for the communication of information by national competent authorities in relation to the national provisions governing marketing requirements and in relation to the regulatory fees and charges related to cross-border activities of AIFMs, EuVECA managers, EuSEF managers and UCITS management companies, and on the draft implementing technical standards that specify the information to be communicated by competent authorities as well as the forms, templates and procedures for the communication of information by competent authorities to ESMA for the purpose of the creation and maintenance of the central database on cross-border marketing of AIFs and UCITS and on the technical arrangements for the functioning of the notification portal as it would have been highly disproportionate to seek the stakeholders' views on the provisions which only affect ESMA and competent authorities.

The Commission Implementing Regulation enters into force on 5 July 2021.

It applies from the date of entry into force except for Articles 1 and 3(1) which apply on 2 August 2021, and Article 5 which applies from 2 February 2022.

PRIIPs

10-May-21: The EC renewed the extension of the exemption for UCITS KIIDs and the application of the new RTS requirements on PRIIPs-KIDs from 1 January 2022 to 1 July 2022.

https://www.efama.org/newsroom/news/efama-asks-sufficient-time-implement-new-priips-rules

The Packaged Retail Investment and Insurance Products (PRIIPs) regulation requires a three-page Key Information Document (KID) when financial products (such as funds, structured products or unit-linked insurances) are sold to retail investors. The aim of KID's object is to provide essential and standardised information to investors to allow them to make an informed investment decision. In essence, the PRIIP KID is known as the successor of the UCITS Key Investor Information Document (KID), and is expected to replace it in due course.

Before making a switch from the UCITS KIID to the PRIIP KID, fund managers need to ensure that the information provided is relevant and non-misleading. In addition, the fund managers must examine an outstanding review of the PRIIPs Regulation. In relation to this, the European Fund and Asset Management Association (EFAMA) explained that it was originally intended the European Commission to endorse the revised Regulatory Technical Standards (RTS) for PRIIPs by Q1 2021. Further, it said that the UCITS exemption is currently due to expire on 31 December 2021, meaning that the PRIIPS KID will need to be produced for all UCITS being sold to retail investors from 1 January 2022. However, EFAMA explained that, with less than nine months remaining until the 31 December 2021 implementation deadline, there is now simply not enough time for fund managers and other product manufacturers to properly implement the envisaged wide-ranging changes. Therefore, EFAMA had requested an extension of 12 months (i.e. 31 December 2022) to the UCITS exemption to ensure proper implementation of new regulatory changes from UCITS KIID to the PRIIPs KID.

After taking into consider the request from EFAMA, the European Commission recently announced a renewed extension of the transitional PRIIPs KID regime for the fund industry until 30 June 2022. In a letter to the European Parliament and the Council on 10 May 2021, the European Commissioner Mairead McGuinness also stated that the EC will move the end of the exemption for UCITS funds and the application of the new RTS requirements from 1 January 2022 to 1 July 2022. It was further noted that this renewed extension plans are due to a lengthy discussions among the European Supervisory Authorities (ESAs) on the RTS for the PRIIPs regulation. In that regard, the final RTS are not currently expected to be published until the fourth quarter of the year 2021. Therefore, the PRIIPs requirements for the fund managers are currently delayed for another six months. Accordingly, investment funds and distributors will not be required to prepare key investor information in the form of a PRIIPs KID or make it available to retail investors as part of an advisory service or distribution before July 1, 2022.

Securitisation (1 of 2)

6-Apr-21: Regulation (EU) 2021/557 and Regulation (EU) 2021/558 to support the economic recovery in response to the COVID-19 crisis

https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L:2021:116:FULL&from=EN

On 6 April 2021, Regulation (EU) 2021/557 of the European Parliament and of the Council of 31 March 2021 amending Securitisation Regulation (EU) (No 2017/2402) laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation to help the recovery from the COVID-19 crisis and Regulation (EU) 2021/558 of the European Parliament and of the Council of 31 March 2021 amending Regulation (EU) No 575/2013 as regards adjustments to the securitisation framework to support the economic recovery in response to the COVID-19 crisis were published in the Official Journal of the European Union.

17-May-21: The Joint Committee of the European Supervisory Authorities published its analysis on the implementation and the functioning of the EU Securitisation Regulation.

https://www.esma.europa.eu/sites/default/files/library/jc_2021_31_jc_report_on_the_implementation_and_functioning_of_the_securitisation_regulation_1.pdf

The Joint Committee of the European Supervisory Authorities (ESAs – European Banking Authority, European Insurance and Occupational Pensions Authority, and European Securities and Markets Authority) published its analysis of the implementation and the functioning of the EU Securitisation Regulation (SECR), including recommendations on how to address initial inconsistencies and challenges, which may affect the overall efficiency of the current securitisation regime. The Report is meant to provide guidance to the European Commission in the context of its review of the functioning of the SECR. It also provides initial inputs to the ongoing discussion on the efficiency of the securitisation framework given the role that securitisation could play in the recovery post the Covid-19 pandemic.

While the recommendations included in the report are meant to provide guidance to the European Commission in the context of the review of the level 1 text of the SECR, further actions could also be considered by the Joint Committee of the European Supervisory Authorities (JC of ESAs), the ESAs and the competent authorities to further enhance the supervision and the well-functioning of the existing requirements in the SECR.

Securitisation (2 of 2)

21-May-21: A draft Bill of law No. 7825 amending the Law of 22 March 2004 on securitisation was submitted to the Luxembourg Parliament.

https://www.chd.lu/wps/portal/public/Accueil/TravailALaChambre/Recherche/RoleDesAffaires?action=doDocpaDetails&id=7825

A draft Bill of law No. 7825 (the "Bill") amending the Law of 22 March 2004 (the "Securitisation Law") and certain other laws was submitted to the Luxembourg Parliament on 21 May 2021. The Bill provides for general modernisation of the Securitisation Law, and aims to increase flexibility compared to other jurisdictions.

The main changes are:

1) Additional corporate legal forms available: The Bill allows special limited partnerships (*sociétés en commandite spéciale*), simple limited partnerships (*sociétés en commandite simple*), general corporate partnerships (*sociétés en nom collectif*), and simplified joint stock company (*sociétés par actions simplifiée*) to be used for securitisation companies.

2) New financing methods available: The Bill extends the instruments that can be issued to include financial instruments other than securities (such as warrants, futures, options, etc.) and it allows securitisation vehicles to be fully financed by credit facilities that no longer need to be either ancillary to the issuance of securities, for warehousing purposes or for short-term liquidity purposes.

3) Active management allowed: The Bill allows securitisation vehicles to actively manage a portfolio of assets consisting of debt securities or loans, to the extent that they do not issue financial instruments to the public.

4) Restrictions on security interests lifted: The Bill provides the possibility for securitisation vehicles to grant security interests over the assets to parties that are involved in a securitisation transaction but are not direct creditors of the securitisation vehicle.

5) Legal subordination defined: The Bill defines the legal subordination of different types of debt and equity instruments issued by a securitisation vehicle.

6) Investor protection increased: The Bill grants better investor protection on a compartment-by-compartment basis by allowing the constitutive documents of securitisation undertakings to organise (i) shareholder votes on the approval of annual accounts, (ii) distributions of profits and reserves, and (ii) allocations to the legal reserve per compartment rather than at the level of the whole securitisation undertaking.

7) Registration of securitisation funds: The Bill requires securitisation funds to be registered with the *Registre de Commerce et des Sociétés* (RCS).

Miscellaneous

9-Apr-21: The CSSF published Circular 21/769 regarding governance and security requirements for supervised entities to perform tasks or activities through telework.

https://www.cssf.lu/wp-content/uploads/cssf21_769eng.pdf

Circular 21/769 introduces Telework-related governance and security requirements for a wide range of professionals of the Luxembourg financial sector, including credit institutions, alternative investment funds managers licensed under the law of 12 July 2013, investment funds, authorized securitization undertakings, payment and electronic money institutions, as well as any other entity supervised by the CSSF.

"**Telework**" in the context of Circular 21/769 is the organisation of work based on information and communication technology (ICT) tools. It requires the employer's prior approval and it must be performed on either regular or an occasional and, in each case, voluntary basis within the defined working hours at a predetermined place, different from the employer's premises. Supervised Entities shall have rules in place to define from where Telework is allowed. No approval by the CSSF is required in order to implement, maintain or extend Telework solutions for staff in a Supervised Entity.

21-Apr-21: The EC proposed the first-ever regulation laying down harmonized rules on artificial intelligence.

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0206

On 21 April 2021, the European Commission (EC) proposed the first-ever Regulation ("AI Regulation") laying down harmonized rules on artificial intelligence (AI) and amending certain EU legislative acts. It particularly concerns the following:

- Harmonized rules for marketing, using, and putting AI systems into service in the EU.
- Prohibitions of certain AI practices that exploit vulnerabilities or materially distort behaviour to an extent that could cause physical or psychological harm.
- Specific requirements for high-risk AI systems and obligations of operators and users of these systems.
- Harmonized transparency rules for AI systems that interact with natural persons, detect emotions or categorize biometrics, and generate or manipulate image, audio or video content.
- Rules on market monitoring and surveillance.

Contacts

Shunei Tachibana
Conducting Officer, Director
✉ shunei.tachibana@jfml.lu
☎ +352 276 920 669

Thierry Grosjean
Conducting Officer
✉ thierry.grosjean@jfml.lu
☎ +352 276 920 240

Thibaut Martin
Conducting Officer
✉ thibaut.martin@jfml.lu
☎ +352 276 920 242

Andrea Ruberto
Risk Manager
✉ andrea.ruberto@jfml.lu
☎ +352 276 920 657

Minkhant Myint
Compliance Officer
✉ minkhant.myint@jfml.lu
☎ +352 276 920 244

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