Regulatory News

Q4 2022

Japan Fund Management (Luxembourg) S.A.

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Ukraine Crisis

19-Dec-22: CSSF updated its webpage compiling all the relevant information for the financial sector in relation to the Ukraine crisis.

https://www.cssf.lu/en/ukraine-crisis/

The CSSF maintains a webpage compiling all the relevant information for the financial sector in relation to the Ukraine crisis. The webpage relates to the CSSF's effort to draw attention of the professionals of the financial sector subject to its supervision to the restrictive measures decided by the EU in response to the current situation in Ukraine. The webpage is regularly updated as the situation continues to evolve; currently, it comprises the following sections:

- **Laws, regulations and directives**, which includes EU regulations binding in their entirety and directly applicable in national law, such as:
  - Council Implementing Regulation (EU) 2022/2476 of 16 December 2022 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.LI.2022.322.01.0318.01.ENG

- **Other reference texts**, which currently includes:
  - EU Best Practices for the effective implementation of restrictive measures: https://data.consilium.europa.eu/doc/document/ST-10572-2022-INIT/en/pdf
  - FAQs on Russia-Ukraine war and ECB Banking Supervision: https://www.bankingsupervision.europa.eu/press/publications/html/ssm.faq_Russia_Ukraine_war_and_Banking_Supervision~8360ccdf6f.en.html
  - FAQs regarding International Financial Sanctions: https://www.cssf.lu/wp-content/uploads/FAQ_International_financial_sanctions.pdf

- **Publications**, which includes among others:
  - Council Decision (EU) 2022/2332 of 28 November 2022 on identifying the violation of Union restrictive measures as an area of crime that meets the criteria specified in Article 83(1) of the Treaty on the Functioning of the EU: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022D2332

- **Useful links**, which currently provides direct access to:
  - EU sanctions adopted following Russia's military aggression against Ukraine (incl. FAQ): https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/restrictive-measures-sanctions/sanctions-adopted-following-russias-military-aggression-against-ukraine_en
  - EU Sanctions Whistleblower Tool: https://eusanctions.integrityline.com
  - EU Sanctions Map of the European Commission in order to keep abreast of the sanctions regime into force: https://sanctionsmap.eu/#/main

Sustainable Finance (1 of 15)

6-Oct-22: EC published the final version of its 2022 FAQs on the interpretation of the Disclosures Delegated Act under Art. 8 of the Taxonomy Regulation. (continue to next slide)

https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022XC1006(01)

On 6 October 2022, the EC published the final version of 33 FAQs (the "2022 FAQs") aiming to clarify the content of the Disclosures Delegated Act under Art. 8 of the Taxonomy Regulation. The 2022 FAQs are divided into 8 sections: 1. General FAQs; 2. Non-financial undertakings; 3. Financial undertakings; 4. Asset managers; 5. Insurers; 6. Credit Institutions; 7. Debt market; 8. Interaction with other regulations. Some clarifications contained in the 2022 FAQs are summarized below:

- **The definition of Taxonomy-eligible economic activities**. In principle, if an undertaking generates turnover or invests in capital expenditure (CapEx) or operating expenditure (OpEx) corresponding to an economic activity that is described in the Climate Delegated Act, it would count as eligible for Taxonomy-eligibility disclosure. On the contrary, if an activity is not yet included in the Delegated Act, it should not be considered as being eligible.
- **How to weight holdings in a portfolio to report Taxonomy-eligible assets**. Annex III to the Disclosures Delegated Act sets out the details of the numerator and denominator of asset managers' for their Taxonomy-aligned KPIs. Eligibility reporting is not weighted by the stake in the undertaking's equity, debt or enterprise value including cash; it is weighted by the value of the exposures in the total assets of the asset manager.
- **How to identify Taxonomy-eligible activities of which activity descriptions contain qualifiers (e.g. 'low carbon')**. The activity descriptions in the Climate Delegated Act serve as a reference point to identify Taxonomy-eligible activities. However, some descriptions contain 'qualifiers' which could be understood in a subjective way, such as 'low carbon', which may in some cases impact the eligibility.

  Eligibility does not depend on compliance with the technical screening criteria but is assessed solely on the basis of the description of the activity. The qualifiers, such as 'low carbon' vehicles or 'low carbon' vessels for the purpose of Annex I to the Climate Delegated Act ('manufacture of low carbon technologies for transport'), which are not defined in a clear way, should only be taken into account for the purposes of determining the compliance with the technical screening criteria and are therefore not relevant for the reporting on eligibility.

  On the other hand, in the case of the activity 'manufacture of other low carbon technologies', the description of the activity points to the objective of the activity. The activity covers manufactured technologies that are 'aimed at substantial life cycle GHG emission savings in other sectors of the economy'. For any activity or product to be eligible for climate change mitigation under this category, the activity or product needs to have the objective of enabling a substantial reduction of GHG emissions in another sector of the economy. This means that if a technology is the best in their sector, but does not aim at substantial emission reductions in another sector, it would not be eligible.

Sustainable Finance (2 of 15)

6-Oct-22: EC published the final version of its 2022 FAQs on the interpretation of the Disclosures Delegated Act under Art. 8 of the Taxonomy Regulation. (continued from previous slide)

- **How to assess and report the Taxonomy-eligibility of a debt asset**. Annex V to the Disclosures Delegated Act sets out the details of how to assess and report loans and debt instruments for Taxonomy-alignment KPIs. To calculate Taxonomy-eligibility of general-purpose debt instruments, it is recommended to apply the eligibility value of the underlying entity (turnover and CapEx). If all or a portion of the use of proceeds of a debt instrument is Taxonomy-eligible, reporting of this value would take precedence over the issuer-level value within the Taxonomy-alignment KPIs. Such proceeds may be directly allocated to Taxonomy-eligible activities or be part of a CapEx or OpEx plan to render an activity or asset Taxonomy-aligned. Not all of a use of proceeds (green) debt instrument would be eligible under the Taxonomy in its entirety: only the portion of the proceeds that can be allocated to Taxonomy-eligible activities would be eligible.
- **The possibility of reporting green debt instruments from non-EU entities as Taxonomy-eligible**. Article 7(4) of the Disclosures Delegated Act states: 'Without prejudice to paragraph 1, environmentally sustainable bonds or debt securities with the purpose of financing specific identified activities that are issued by an investee undertaking shall be included in the numerator of KPIs up to the full value of Taxonomy-aligned economic activities that the proceeds of those bonds and debt securities finance, on the basis of information provided by the investee undertaking.' Therefore, financial undertakings shall include in the numerator of the eligibility disclosure the Taxonomy-eligible proceeds of environmentally sustainable bonds and debt securities whose purpose is to finance specific identified activities. Debt securities under Article 7(4) include non-EU issuers' use of proceeds bonds, while do not include use of proceeds loans.
- **The interaction between the Disclosures Delegated Act and the CSRD**. The information under the Disclosures Delegated Act should be reported in the same management report at company level, alongside other sustainability related information required under the CSRD provisions. To this information, the same assurance and digitalisation requirements would apply as to the rest of the sustainability information reported.

Background

On 20 December 2021, the EC published 22 FAQs (the "2021 FAQs") on how financial and non-financial undertakings should report taxonomy-eligible economic activities and assets in accordance with the Disclosures Delegated Act. The 2022 FAQs complement the 2021 FAQs; the latter are available here:

https://finance.ec.europa.eu/system/files/2022-01/sustainable-finance-taxonomy-article-8-report-eligible-activities-assets-faq_en.pdf

Sustainable Finance (3 of 15)

11-Oct-22: Platform on Sustainable Finance published two reports on i) Data and Usability of the EU Taxonomy, and ii) Minimum Safeguards under Art. 18 of the Taxonomy Regulation. (continue to next slide)

https://finance.ec.europa.eu/system/files/2022-10/221011-sustainable-finance-platform-finance-report-usability_en_1.pdf

Platform recommendations on Data and Usability of the EU Taxonomy

The Platform addresses 64 recommendations to the Commission and the ESAs to support upcoming and implemented Sustainable Finance reporting obligations, focusing on the Taxonomy reporting exercise and its interlinkages with the Sustainable Finance package, data challenges, verification and international considerations.

The Platform recommendations have been prioritised based on the urgency with which they should be addressed; some categorized as high priority are summarized below.

Financial and Non-Financial Undertakings Taxonomy Reporting (Article 5, 6 & 8 Delegated Act).

Large listed companies subject to NFRD/CSRD have to establish robust sustainability accounting and reporting standards according to their relevant set technical screening criteria and to annually report their Taxonomy eligibility and alignment.

The report maps out a complete list of Taxonomy users and uses, contains a detailed overview of the first implementation phase of the Taxonomy by economic agents and across financial markets, and identifies key challenges for these users when applying the Taxonomy.

The Platform recommendations include:

- Further implementation guidelines for Taxonomy-alignment reporting are needed for financial undertakings.
- Delegated Act Art. 7(7) should allow for the use of ‘equivalent information’ (permitted Taxonomy-estimates) as defined in Arts. 5 and 6 reporting by the ESAs for companies that are not subject to the NFRD and CSRD, where self-reported Taxonomy-eligibility and alignment have not been provided.
- Adopting a common approach to defining numerators and denominators (as well as assets to exclude) across the Taxonomy reporting obligations.
- Includes specific recommendations for targeted adjustments to enhance the usability of the taxonomy, allowing the consistency and availability of companies’ taxonomy eligibility and alignment.

Sustainable Finance (4 of 15)

11-Oct-22: Platform on Sustainable Finance published two reports on i) Data and Usability of the EU Taxonomy, and ii) Minimum Safeguards under Art. 18 of the Taxonomy Regulation. (continued from previous slide)

Data challenges.

January 2024 will mark the first reporting period on Taxonomy alignment to all environmental objectives for the financial year 2023, allowing asset managers with Article 8 and 9 under SFDR to comply with how and to what extent their product aligns with the Taxonomy for the first time.

ESMA has been tasked with the establishment of a tool to foster accessibility and comparability, the European Single Access Point (ESAP), providing centralized access to all relevant Taxonomy information easily and with free access to the public companies within the EU.

The Platform recommendations include:

- That the data to be submitted to the ESAP explicitly incorporates all the requirements under the Taxonomy and CSRD in the same format, which have been preliminary checked and verified, placing particular care on the uploading module of Taxonomy data to ensure consistency, and keep a historical trail of the different versions submitted.
- Give ESMA the necessary means to carry out data validation checks to ensure high quality reliable and usable information and the authority to reject data failing to comply with the minimum requirements.

Verification.

Information subject to assurance under the Taxonomy reporting entails three layers of verification: one to control for certain technical screening criteria, methodologies and calculation of the performance level of the environmental objective; the second checks the disclosed taxonomy alignment and reporting; and the third includes the assurance of financial product reporting and financial instrument issuance.

The CSRD obliges the European Commission to adopt an assurance standard for sustainability reporting no later than 1 October 2028; until then, limited assurance will be mandatory in all EU states.

The Platform recommendations include:

- To set clear requirements on equivalent information to build a framework by which assurers can certify such reporting.
- To establish a European assurance standard framework for CSRD and sustainability reporting requirements within the EU, and to assess whether the framework can take ISAE 3000 as a starting point and be adjusted to the EU Sustainability reporting framework including the ESRS.

Sustainable Finance (5 of 15)

11-Oct-22: Platform on Sustainable Finance published two reports on i) Data and Usability of the EU Taxonomy, and ii) Minimum Safeguards under Art. 18 of the Taxonomy Regulation. (continued from previous slide)

Sustainable regulatory framework.

Outlines the interlinkages and inconsistencies with the Taxonomy and the CSRD, SFDR, BMR, MiFID II and IDD (this set of regulation is defined as the Sustainable Finance Package) and proposes amendments to strengthen consistency and policy coherence.

Sustainable Finance Disclosure Regulation (SFDR).

The Platform recommendations include:

- Considering the use of Taxonomy metrics and the underlying methodologies (even if the scope of application differs) to define environmental PAIs, and distinguishing clearly between environmental “do no significant harm” in reference to the Taxonomy and “do no significant harm” of SFDR (captured through PAIs).
- Aligning social and governance PAIs and Minimum Safeguards of the Taxonomy Regulation, and replacing the “good governance” check in SFDR with Minimum Safeguards as in Art. 18 of the Taxonomy, as they include both social and governance safeguards.
- Including a short list of always significant harmful social and environmental activities as “always principally adverse” in the absence of a Taxonomy addressing always significantly harmful activities (or until such Taxonomy exists).
- Aligning ESRS and PAI social indicators with the Taxonomy’s Minimum Safeguards by referring to the UN Guiding Principles for Business and Human Rights instead of the UN Global Compact principles.

Benchmark Regulation (BMR).

The Platform recommendations include:

- ESG-based benchmarks disclosure requirements should be fully aligned with SFDR PAI disclosures, and should include Taxonomy alignment.
- SFDR PAI and Paris-aligned Benchmarks/Climate Transition Benchmarks exclusions should align (e.g., both should consider reporting against Tobacco).
- UN Global Compact should be replaced by UN Guiding Principles on Business and Human Rights to gain consistency between both regulations.

Sustainable Finance (6 of 15)

11-Oct-22: Platform on Sustainable Finance published two reports on i) Data and Usability of the EU Taxonomy, and ii) Minimum Safeguards under Art. 18 of the Taxonomy Regulation. (continued from previous slide)

International considerations recommendations.

The Platform addresses usability challenges linked to the Taxonomy to enhance its international operability and foster the development of a harmonized framework.

The Platform recommendations include:

- The European Commission should translate EU regulation criteria into quantitative or process based criteria to facilitate its application outside of the EU.
- To develop mappings between EU-based technical criteria and labelling schemes to the most widely used international standards and define clearly investment types such as development finance, blended finance that should benefit from the application of such standards. It is important that the Taxonomy can help channel sustainable finance to emerging markets, as the concept of a just green transition seems to be even more important in these geographies than in developed countries.
- To develop, promote and widen the base for identified commonalities between taxonomies, mapping the standards, metrics and labels to develop a global framework for taxonomies with equivalence mechanisms. The Platform also recognises the importance to incentivise other regions to incorporate the principle of DNSH and minimum safeguards in their taxonomies.

Recommendations for future platform work.

The Platform identified 15 key recommendations for which the Platform advice were already ongoing, recommended area for near-term Platform further advice and potential area for Platform further advice.

Current focus of the Platform relate to:

- The treatment of SMEs and derivatives in reporting for the Taxonomy.
- The treatment of DNSH in reporting for financial products where self-disclosures is not provided.
- The application of Taxonomy-aligned finance into emerging and international economies.

Sustainable Finance (7 of 15)

11-Oct-22: Platform on Sustainable Finance published two reports on i) Data and Usability of the EU Taxonomy, and ii) Minimum Safeguards under Art. 18 of the Taxonomy Regulation. (continued from previous slide)

https://finance.ec.europa.eu/system/files/2022-10/221011-sustainable-finance-platform-finance-report-minimum-safeguards_en.pdf

Platform recommendations on Minimum Safeguards under Art. 18 of the Taxonomy Regulation

The report aims at guiding the financial sector and companies towards compliance with the minimum safeguards in relation to the EU Taxonomy; in particular:

Highlights the topics on which advice is needed.

The main standards for responsible business conduct are: i) OECD Guidelines for Multinational Enterprises (MNE); ii) UN Guiding Principles on Business and Human Rights (UNGPs); iii) the eight ILO conventions on fundamental principles and rights at work; and iv) the international bill of human rights.

Through the lens of the minimum safeguards, four substantive topics remain pertinent among those standards: i) Human rights, including workers' rights; ii) Bribery/corruption; iii) Taxation; and iv) Fair competition.

The scope of application covers private and public entities incorporated as companies, sovereigns and sub-sovereigns.

Clarifies the regulatory landscape of relevance.

- SFDR links to minimum safeguards involve social Principal Adverse Impacts and the good governance practices check for Art. 8 and 9.
- CSRD (Corporate Sustainability Reporting Directive) links to minimum safeguards include reporting items related to actual or potential adverse impacts connected with the undertaking's value chain, including its own operations, products and services, business relationships, and supply chain. CSRD will require disclosures on human rights due diligence, business conduct (including corruption and fair competition), strategy and business model (including taxation) by larger EU companies.
- CSDDD (Corporate Sustainability Due Diligence Directive) proposal's links to minimum safeguards envisage due diligence obligations related to human rights and the environment. If the CSDDD proposal becomes law and a significant overlap and alignment with Art. 18 standards is maintained, compliance with the law would in the future serve as a proxy for Art. 18 alignment on human rights, including labour rights by companies. CSDDD will make human rights due diligence mandatory for larger EU companies.

Sustainable Finance (8 of 15)

11-Oct-22: Platform on Sustainable Finance published two reports on i) Data and Usability of the EU Taxonomy, and ii) Minimum Safeguards under Art. 18 of the Taxonomy Regulation. (continued from previous slide)

Provides an overview of current market practices.

Many companies have begun to identify, assess, and manage potential and/or actual human rights impacts resulting from their operations; however, the uptake of due diligence procedures as required by the UNGPs and OECD Guidelines for MNE is far from accomplished.

Some of the best performing companies today are those that, applying the principle of double materiality, simultaneously address both risks to people and risks to the business, putting in place efficient operational level grievance mechanisms and, in case of actual adverse impacts, participating or providing for remediation.

Although the current market practice tends to rely heavily on controversy screening as a mean to analyse a company's business conduct, a company should not be considered as compliant with minimum safeguards only on the basis that there is no controversy, because the company must also have adequate human rights due diligence processes in place. On the other hand, the company could still be compliant with minimum safeguards even if there is a controversy, provided that it has implemented a due diligence process, is remediating the case, and uses the controversy as an opportunity to improve its human rights processes.

Recommends criteria for evaluating non-compliance.

The two main criteria proposed for assessing non-compliance with minimum safeguards are:

1. The company has not established adequate human rights due diligence processes, as outlined in the UNGPs and OECD Guidelines for MNE;
2. There are clear indications that the company does not adequately implement human rights due diligence, resulting in human rights abuses. Data on breaches should be generated from sources with a high level of independence and impartiality. The suggestion is that:

   a) The company has been held liable or found to be in breach of labour law or human rights in certain types of court cases on labour law or on human rights.

   b) The following two indicators signal that the company does not engage with stakeholders, although this is an integral part of the UNGPs:

   - A National Contact Point (NCP) has accepted a case, however the company refuses to engage with the party which has initiated it, or the company has been found non-compliant with the OECD Guidelines by an NCP.
   - The Business and Human Rights Resource Centre has taken up an allegation against the company, and the company has not answered it within 3 months.

Sustainable Finance (9 of 15)

26-Oct-22: CSSF published a thematic review focused on the information reported under Art. 8 of the Taxonomy Regulation.

https://www.cssf.lu/wp-content/uploads/Rapport-Publication-Art-8-Taxonomie.pdf

The report analyses the data collected from a population of 31 non-financial undertakings ('NFUs') and comments on the information required by Article 8 of the Taxonomy Regulation published between the 1 January 2022 and the 30 June 2022. It illustrates how the Issuers have reported on eligible activities, KPIs and qualitative information and provides remarks, recommendations and guidance for the next reporting exercise.

As from January 2023, the Disclosures Delegated Act ('DDA') will fully apply to NFUs and they will need to report their activities that are considered aligned. Issuers will have to fill up the reporting tables included in Appendix II of the DDA where the main issue is associated with the reporting of the individual contribution to the different objectives. Financial undertakings will still only have to report on the proportion of their exposures to activities that are considered as eligible total assets.

Important reminders.

- Issuers shall not only refer to the NACE codes, but also to the corresponding economic activity as per the Climate Delegated Act ('CDA').
- The eligibility identification process for many NFUs has not been finalized, however they have to stand ready for the scheduled new reporting requirements as from 1 January 2023.
- Section B from templates in Annex II to the DDA shall be filled even for Issuers that do not have eligible economic activities and provide explanations on what are these activities and why they are not eligible.
- The purpose of reporting information under Article 8 of the Taxonomy Regulation is to report on all the activities that are eligible to qualify as environmentally sustainable regardless of their materiality status for the specific case of the issuer (whether they actually qualify as environmentally sustainable and are part of its Taxonomy alignment).
- Issuers should monitor developments that may occur in relation to the released Complementary CDA including specific nuclear and gas energy activities and determine any resulting implications on their disclosures requirements as of 1 January 2023.

Recommendations.

- Although not explicitly required, Issuers should give narrative information on their economic activities which do not meet descriptions in the CDA.
- The scope of eligible economic activities of an undertaking may go beyond the operations which may be considered as being part of its core activities.
- Issuers should provide more qualitative information on the eligible activities which have been retained for each KPI and explain why some have been retained for certain KPIs and not for others.

Sustainable Finance (10 of 15)

31-Oct-22: EC adopted the Commission Delegated Regulation amending existing SFDR Level 2 Regulations to incorporate additional disclosure obligations relating to exposure to investments in Taxonomy-aligned gas and nuclear economic activities.

https://finance.ec.europa.eu/system/files/2022-10/C_2022_7545_1_EN_ACT_part1_v2.pdf

https://finance.ec.europa.eu/system/files/2022-10/C_2022_7545_1_EN_annexe_acte_autonome_cp_part1_v3.pdf

On 31 October 2022, the European Commission adopted the Commission Delegated Regulation amending existing SFDR Level 2 Regulations, which introduces new disclosures obligations related to the exposure of financial products to investments in Taxonomy-aligned gas and nuclear economic activities. In particular, the draft of the amending SFDR Level 2 Regulations includes **revised pre-contractual and periodic reporting annexes**, which include the proportion of investments in gas and nuclear economic activities within all investments, and in environmentally sustainable economic activities.

The Council and the European Parliament have 3 months to review the draft of the amending SFDR Level 2 Regulations, i.e. until **31 January 2023**; once published in the EU Official Journal, it will take effect on the third day following publication.

Background

On May 6 2022, ESMA published a letter from the EC to the ESAs requesting that they propose amendments to the RTS adopted on 6 April 2022 in relation to disclosures on investments in fossil gas and nuclear energy activities, based on the Complementary Climate Delegated Regulation adopted on 9 March 2022 covering nuclear and fossil gas activities.

The aim of such amendments is to ensure full transparency on the proportion that such investments represent within all investments, and on environmentally sustainable economic activities.

Sustainable Finance (11 of 15)

17-Nov-22: ESAs published their Q&A on the SFDR Delegated Regulation. (continue to next slide)

https://www.esma.europa.eu/sites/default/files/library/jc_2022_62_jc_sfdr_qas.pdf

Current value of all investments in PAI and Taxonomy-aligned disclosures.

Q: What does "current value" mean?

A: Investee company's enterprise value, being the sum at fiscal year-end of the market capitalisation, book value of total debt, non-controlling interests including cash.

Q: How should "all investments" be understood?

A: For PAI calculations, both direct and indirect investments funding investee companies or sovereigns through funds, funds of funds, bonds, equity instruments, derivatives, loans, deposits and cash (AuM for asset managers). For Taxonomy-alignment calculation, the Delegated Regulation does not set any limitation to the definition of "all investments of the financial products" in the denominator which therefore includes the market value of all types of securities or financial contracts.

Q: Do the ESAs have a view on how to incorporate short positions within the PAI indicators?

A: The principal adverse impacts of long and short positions should also be netted accordingly at the level of the individual counterpart (investee undertaking, sovereign, supranational, real estate asset), but without going below zero.

PAI disclosures.

Q: In the delegated regulation, the timing of the amount of the current investments in an investee company (holding date) and the enterprise value (company's fiscal year end) are not aligned. Given market movement between those dates, the calculation of the percentage owned will be inaccurate…

A: The ESAs are aware that there is a potential misalignment. The quarterly impacts should be based on the current value of the investment derived from the valuation the individual investment (e.g. share) price valued at fiscal year-end multiplied by the quantity of investments (e.g. shares) held at the end of each quarter.

Q: Should the "information about the policies on the integration of sustainability risks in the investment decision-making process" of the financial market participant be restricted to investments affected by other Articles of SFDR (such as Article 6 SFDR) or should this be understood in a wider sense covering all investment decisions?

A: The scope of the disclosures is limited by the definitions of "financial market participant" in Article 2(1) SFDR, (i.e. credit institutions and investment firms should only cover their portfolio management activities and e.g. not their own account).

Sustainable Finance (12 of 15)

17-Nov-22: ESAs published their Q&A on the SFDR Delegated Regulation. (continued from previous slide)

Financial product disclosures.

Q: Can FMPs remove sections in the pre contractual and periodic disclosure templates provided in Annex II to Annex V of the Delegated Regulation that are not deemed relevant for their financial product?

A: Yes, only if those sections are accompanied by a red text instruction that explicitly limit the scope of application of the section.

Q: How can a financial product disclosing under Article 8 SFDR assess that good governance is effectively considered? Is a reference to the UN Global compact sufficient or should there be an alignment with OECD or ILO principles?

A: The use of reference metrics, such as UN Global Compact, OECD or ILO principles is not prescribed, but could form part of the “policy to assess” the management structures, employee relations, remuneration of staff and tax compliance.

Q: Can the objective-aligned index designated as a reference benchmark under Article 9(1) SFDR, i.e. the “designated index” referred to in 9(1)(a) or 9(1)(b), be a broad market index?

A: No, the requirement in Article 9(1)(b) SFDR to explain “how” the designated index differs from a broad market index suggests that the designated index cannot itself be a broad market index.

Multi-option products.

Q: How is the envisaged product classification in case of a multi-option product (MOP) that comprises only one investment option that (partially) invests in line with the Taxonomy Regulation? Would the entire MOP classify as a financial product falling under Article 5-6 TR?

A: A MOP falls under Article 5 of the TR when all of the underlying options offered have sustainable investment as their objective and at least one investment option invests in an economic activity that contributes to an environmental objective within the meaning of Article 2 (17) SFDR. A MOP falls under Article 6 of the Taxonomy Regulation when at least one underlying option offered promotes environmental characteristics.

Sustainable Finance (13 of 15)

17-Nov-22: ESAs published their Q&A on the SFDR Delegated Regulation. (continued from previous slide)

Taxonomy-aligned investment disclosures.

Q: Can taxonomy-aligned activities or PAI impacts from green bonds (or other specific project financing instruments like social bonds) be calculated for the projects they finance rather than taxonomy-aligned activities of or impacts arising from the issuer as a whole?

A: Taxonomy alignment: As stated in Article 17(1)(b) of the Delegated Regulation, for its taxonomy-alignment KPI, a financial market participant can count an investment in a green bond up to the level of taxonomy-aligned activities the use of proceeds goes towards. The financial market participant should not take into account the issuer of such instruments for the purpose of the taxonomy-alignment KPI of the financial product.

PAI disclosure: Some PAI indicators in Table 1 of Annex I of the Delegated Regulation could be applied at "project" level and not company level where the investment is in a security that finances a specific project rather than the issuer issuing the security, for instance for GHG emissions, land artificialisation or rate of accidents.

Q: How should activities be counted that qualify as Taxonomy-aligned while at the same time contribute to another environmental and/or social objective?

A: For the avoidance of doubt and double counting, if the activity contributes to more than one objective, the financial market participant should choose the objective to which the activity contributes most or that is better aligned with the environmental objective of the fund or investment.

Q: How should FMPs measure the positive contribution for sustainable investments and can they use the KPIs for taxonomy-alignment (Turnover, CapEx, OpEx)?

A: Neither SFDR nor the Delegated Regulation provide for a specific methodology. However, While turnover gives a backward-looking view on the activities of a company that are already Taxonomy-aligned; CapEx provides a forward-looking view of companies' plans to transform or expand their business activities and the efforts they are making to green their activities and/or assets. Furthermore, CapEx investments can include those that expand an already aligned activity or asset, or that render them Taxonomy-aligned.

Financial advisers and execution-only FMPs.

Q: Do the rules for financial advisers also apply to financial advisers carrying non advised sales (execution only)?

A: It is clear from the definition of "financial adviser" in Article 2(11) SFDR that only intermediaries/advisers providing advice have to abide by the SFDR rules.

Sustainable Finance (14 of 15)

2-Dec-22: CSSF published its FAQ on SFDR.

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

CSSF FAQ on SFDR applies to Financial Market Participants (AIFMs, UCITS Management Companies, managers of a qualifying EuVECA, and managers of a qualifying EuSEF) and Financial Products (AIFs and UCITS) as referred to under Art. 2 SFDR.

Besides consolidating some key publications to be read in conjunction with its FAQ, the CSSF provided further clarity on the following topics:

- **Updates of prospectuses/issuing documents**. Changes to Arts. 8 and 9 SFDR RTS pre-contractual templates follow the same regime as any other changes made to the prospectus/issuing document; the mere introduction of such templates does not qualify as a material change.
- **Website disclosures**. The IFM is responsible for the disclosure requirements of Art. 10 SFDR in relation to the relevant financial product it manages, regardless of the delegation of the portfolio management function, and must ensure that all relevant information pursuant to Art. 10 SFDR is made available on its website or on another website.
- **Pre-contractual disclosures**. Minimum thresholds of investments disclosed by funds under Art. 8 or Art. 9 SFDR in their prospectus/issuing document shall be considered as binding commitments of the investment strategy of the fund.

  Investments made by a financial product to which Art. 9 SFDR applies must qualify as “sustainable investments”, as defined in Art. 2(17) SFDR, at the date of the actual investments and on an ongoing basis during the life cycle of the fund.

  Funds disclosing under Art. 8 SFDR shall provide a description of how the investment strategy allows to meet the environmental and/or social characteristics; should only an exclusion strategy be applied as a key element of the ESG strategy applicable to the relevant fund, the CSSF would expect the detailed exclusion strategy to allow investors to understand how the fund’s environmental and/or social characteristics are being met.

  For funds disclosing under Art. 9 SFDR, the CSSF expects that an inclusion strategy setting out the positive investment selection process is mandatory to demonstrate how all underlying investments meet the conditions of Art. 2(17) SFDR. An exclusion strategy, which would be in line with the investment strategy and the binding positive investment selection process of the fund, can be used on top of the positive selection process, but alone is not sufficient.
- **Periodic disclosures**. Annual reports of UCITS and AIFs (independently of their financial year-end), issued as from 1 January 2023, with funds disclosing under Art. 8 and/or Art. 9 SFDR, shall comply with the product disclosure requirements in periodic reports laid down in Art. 11 SFDR and further clarified by the SFDR RTS, including the information to be presented in an annex to the annual reports by using the mandatory templates.

Sustainable Finance (15 of 15)

16-Dec-22: The Corporate Sustainability Reporting Directive (CSRD) has been published in the EU Official Journal.

https://data.consilium.europa.eu/doc/document/PE-35-2022-INIT/en/pdf

Following the Council's approval of the European Parliament's position on 28 November 2022, the Corporate Sustainability Reporting Directive (CSRD) has been published in the EU Official Journal on 16 December 2022. It entered into force on 5 January 2023, 20 days following its publication.

The CSRD introduces more detailed reporting requirements and ensures that large companies and listed SMEs are required to report on sustainability matters such as environmental rights, social rights, human rights and governance factors.

The new sustainability reporting rules will apply to all large companies and to all companies listed on regulated markets except listed micro undertakings. These companies are also responsible for assessing the information applicable to their subsidiaries. The rules also apply to listed SMEs, taking into account their specific characteristics. An opt-out will be possible for listed SMEs during a transitional period, exempting them from the application of the directive until 2028.

For non-European companies, the requirement to provide a sustainability report applies to all companies generating a net turnover of EUR 150 million in the EU and which have at least one subsidiary or branch in the EU exceeding certain thresholds. These companies must provide a report on their environmental, social and governance (ESG) impacts, as defined in this directive.

The European Financial Reporting Advisory Group (EFRAG) will be responsible for developing draft European standards. The European Commission will adopt the final version of the standards as a delegated act, following consultations with EU member states and a number of European bodies.

Background

The European Commission presented the CSRD proposal on 21 April 2021 as part of the European Green Deal and the Sustainable Finance Agenda.

On 24 February 2022, EU member states unanimously agreed on the Council's position on the CSRD proposal.

On 21 June 2022, the Council and the European Parliament reached a provisional agreement on the CSRD, which was endorsed by EU member states' representatives on 30 June 2022.

On 28 November 2022, the Council gave its final approval to the CSRD.

AML/CFT (1 of 3)

4-Oct-22: EC approved an updated list of non-cooperative jurisdictions for tax purposes.

https://data.consilium.europa.eu/doc/document/ST-13092-2022-INIT/en/pdf

Three jurisdictions have been added (blue) to the “EU blacklist”:

American Samoa	Fiji	Panama	Turks and Caicos Islands
Anguilla	Guam	Samoa	US Virgin Islands
The Bahamas	Palau	Trinidad and Tobago	Vanuatu

In addition, two jurisdictions have been added (blue) to and two jurisdictions have been removed (~~strikethrough~~) from the “EU grey list”:

Armenia	Costa Rica	Jamaica	Qatar	Russian Federation
Barbados	Dominica	Jordan	Seychelles	Vietnam
Belize	Eswatini	Malaysia	Thailand	~~Bermuda~~
Botswana	Hong Kong	Montserrat	Türkiye	~~Tunisia~~
British Virgin Islands	Israel	North Macedonia	Uruguay	

Background

The EU list of non-cooperative jurisdictions is part of the EU’s efforts to promote and strengthen tax good governance mechanisms, fair taxation, and global tax transparency in order to tackle tax fraud, evasion and avoidance. The aim of the so-called “EU blacklist”, which is published as an annex (Annex I) to conclusions adopted by the Ecofin Council, is to encourage positive change in tax legislation and practices, through cooperation.

Jurisdictions that do not yet comply with all international tax standards but have committed to implementing reforms are included in a state of play document (Annex II), the so-called “EU grey list”.

AML/CFT (2 of 3)

27-Oct-22: CSSF published Circular 22/822 based on the recent FATF statements concerning i) high-risk jurisdictions subject to a call for action, and ii) jurisdictions under increased monitoring.

https://www.cssf.lu/wp-content/uploads/cssf22_822_eng.pdf

High-risk jurisdictions subject to a FATF call for action to:

i. apply countermeasures: **Democratic People's Republic of Korea** (unchanged); **Iran** (unchanged).
ii. apply enhanced due diligence measures: **Myanmar** (newly added).

Jurisdictions under increased monitoring by FATF (added jurisdiction: blue; removed jurisdiction: ~~strikethrough~~):

Albania	Democratic Republic of the Congo	Mali	Senegal	Uganda
Barbados	Gibraltar	Morocco	South Sudan	United Arab Emirates
Burkina Faso	Haiti	Mozambique	Syria	Yemen
Cambodia	Jamaica	Panama	Tanzania	~~Nicaragua~~
Cayman Islands	Jordan	Philippines	Türkiye	~~Pakistan~~

Background

High-risk jurisdictions have significant strategic deficiencies in their regimes to counter money laundering, terrorist financing, and financing of proliferation. For all countries identified as high-risk, the FATF calls on all members and urges all jurisdictions to apply enhanced due diligence, and, in the most serious cases, countries are called upon to apply countermeasures to protect the international financial system. This list is often externally referred to as the “FATF black list”.

Jurisdictions under increased monitoring are actively working with the FATF to address strategic deficiencies in their regimes to counter money laundering, terrorist financing, and proliferation financing. When the FATF places a jurisdiction under increased monitoring, it means the country has committed to resolve swiftly the identified strategic deficiencies within agreed timeframes and is subject to increased monitoring. This list is often externally referred to as the “FATF grey list”.

AML/CFT (3 of 3)

22-Nov-22: The EU Court of Justice ruled that the AMLD provision whereby the information on the beneficial ownership of companies incorporated within the territory of the Member States is accessible in all cases to any member of the general public is invalid.

https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62020CJ0037

On 22 November 2022, the EU Court of Justice ruled that the “public access” feature of the Luxembourg Register of Beneficial Owners (“RBO”), stemming from AMLD V, is invalid in light of the Charter of Fundamental Rights of the EU (the “Charter”), since it interferes with the rights guaranteed in Art. 7 (respect for private and family life) and Art. 8 (protection of personal data) of the Charter. All other provisions of the Law of 13 January 2019 establishing the Luxembourg RBO are not affected by this ruling.

Moreover, the EU Court of Justice clarified that optional AMLD provisions allowing Member States to make information on beneficial ownership available on condition of online registration and to provide, in exceptional circumstances, for an exemption from access to that information by the general public, respectively, are not, in themselves, capable of demonstrating either a proper balance between the objective of general interest pursued and the fundamental rights enshrined in Art. 7 and 8 of the Charter, or the existence of sufficient safeguards enabling data subjects to protect their personal data effectively against the risks of abuse.

Following the judgment, on 16 December 2022 the Luxembourg RBO has set up a new procedure for consulting the register. To qualify for RBO access, it is now mandatory:

- Being a professional within the meaning of Art. 2 of the amended Act of 12 November 2004 on the fight against money laundering and terrorist financing;
- Having a private or PRO certificate issued by Luxtrust S.A.;
- Having signed an agreement and its technical annex.

Following approval of the request, the Luxembourg RBO will open a client account allowing access to the register with designation of a leader. The leader may in turn and under his responsibility integrate other users via an access management application.

Additional information are available at: https://www.lbr.lu/mjrcs-rbe/jsp/webapp/static/mjrcs/en/mjrcs-rbe/consultationRBEAcccess.html

DAC

8-Dec-22: EC adopted a proposal to amend Directive EU 2011/16 on Administrative Cooperation (DAC 8) and launched a public consultation.

https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12632-Tax-fraud-&-evasion-strengthening-rules-on-administrative-cooperation-and-expanding-the-exchange-of-information_en

On 8 December 2022, the EC adopted a proposal to amend Directive EU 2011/16 on Administrative Cooperation (DAC 8) and launched a public consultation; the 8-week feedback period is being extended every day until the proposal is available in all EU languages.

The proposal extends the scope to cover the exchange of information on crypto-assets, and also aims at introducing a common system of minimum penalties for serious non-compliance offences, applicable both to existing and proposed disclosure requirements. The proposal includes rules on due diligence procedures and reporting requirements for crypto assets service providers, and is aligned with the definitions included in the Markets in Crypto-Assets (MiCA) Regulation.

The proposal is expected to have a positive impact on tax collection, with additional tax revenues estimated at EUR 1.7 billion stemming from crypto-asset transactions. The benefits for national budgets in terms of additional tax revenues are expected to significantly outweigh costs.

In addition, the proposal is expected to have a limited impact on SMEs. The information to be reported is largely available to crypto-asset service providers for their daily operations. While the proposal will bring compliance costs, it may be more favourable to SMEs to have a single set of rules across the EU, rather than a potential patchwork of reporting requirements across the EU. The proposal should also ensure a level playing field across all categories of players.

The EC proposed that the new provisions apply generally as from 1 January 2026.

Background

DAC 6: EU Council Directive 2018/822 of 25 May 2018, amending Directive 2011/16/EU on Administrative Cooperation (DAC 6), introduced a new mandatory disclosure regime for European advisors and taxpayers. It entered into force on 25 June 2018.

DAC 7: On 25 November 2020, the EU Council presented draft text of the DAC 7 amendments, which extended the scope of the EU automatic information exchange to include digital platform operators. On 10 March 2021, the EU Parliament adopted the proposed DAC 7 text with minimal amendments. On 22 March 2021, the EU Council adopted the new rules, applicable from **1 January 2023** (EU Member States have to transpose these rules into national legislation by 31 December 2022).

DAC 8: On 10 March 2021, the EC launched a first public consultation on DAC 8, which closed on 2 June 2021.

UCITS & other UCIs (1 of 3)

17-Nov-22: CSSF developed a Standardised Model Prospectus that can be used when submitting an application for approval of a new UCITS.

https://www.cssf.lu/en/standardised-model-prospectus-for-ucits/

The Standardised Model Prospectus is a proposal for drafting a prospectus for a UCITS project. The Standardised Model Prospectus is drafted in English and its wording is designed for the set-up of an undertaking of collective investment with the following characteristics:

- A UCITS subject to Part I of the Law of 17 December 2010 concerning undertakings for collective investment;
- A UCITS to be set up in the form of a SICAV;
- A UCITS to be managed by a Luxembourg-domiciled Management Company or by a Management Company domiciled in another EU Member state in accordance with the freedom to provide services on a cross-border basis;
- A UCITS set up with multiple sub-funds of low to average complexity.

While the Standardised Model Prospectus is set up with the greatest possible care to reflect current and up-to-date practice, the content is composed of information of a general nature and may need customisation to suit the context and circumstances of any specific fund project. More detail on the manner and degree of customisation of the prospectus can be found in the accompanying documents “Sub-Fund Specific Guidance” and “User Guide”.

Neither the Standardised Model Prospectus nor the Sub-Fund Specific Guidance shall be considered as a regulatory requirement or as a guarantee for the approval. It is intended to serve as a guidance and good practice to achieve reduced overall processing time. The CSSF reserves the right to request additional information as it deems necessary in the context of the authorisation process.

UCITS & other UCIs (2 of 3)

16-Dec-22: CSSF updated its FAQ on the Law of 17 December 2010 and its FAQ on the Key Investor Information Document.
(continue to next slide)

https://www.cssf.lu/wp-content/uploads/FAQ_Law_17_December_2010_161222.pdf

CSSF updated its FAQ on the Law of 17 December 2010 by modifying question 6.1 and by adding questions 6.2 to 6.8, as summarized below:

Q6.1: Do manufacturers of Luxembourg UCITS made available to retail investors in the EU/EEA ("Luxembourg retail UCITS") need to draw up a PRIIPs KID?

A6.1: Yes, manufacturers of Luxembourg retail UCITS need to have in place a PRIIPs KID as of 01.01.2023. Manufacturers of Luxembourg UCITS reserved to professional investors as well as manufacturers of Luxembourg UCITS made available to investors outside of the EU/EEA may continue to draw up a KIID.

Q6.2: When do Luxembourg UCITS that replace their KIIDs by PRIIPs KIDs need to file such PRIIPs KIDs with the CSSF?

A6.2: Luxembourg UCITS need to file the PRIIPs KIDs that replace their KIIDs with the CSSF by 31.01.2023 at the latest. The CSSF also expects non-Luxembourg UCITS that are registered for marketing to investors in Luxembourg to notify their PRIIPs KIDs to the CSSF within the same timeframe.

Q6.3: Which procedure must be followed in order to file a PRIIPs KID with the CSSF?

A6.3: The PRIIPs KID shall be filed with the CSSF by applying the same procedures and using the same channels as for the filing of the KIID.

Q6.4: Does a specific nomenclature/naming convention apply in connection with the filing of a PRIIPs KID with the CSSF?

A6.4: The PRIIPs KID shall be filed with the CSSF by applying the same nomenclature/naming convention as for the filing of the KIID.

Q6.5: Is it possible to draw up and file a PRIIPs KID instead of a KIID prior to 1 January 2023?

A6.5: No. The requirements under the UCITS Directive to draw up and provide a KIID continue to apply to Luxembourg UCITS until 31.12.2022.

Q6.6: Are manufacturers of Luxembourg UCITS required to draw up a PRIIPs KID if such UCITS is no longer available to retail investors as of 01.01.2023?

A6.6: The CSSF is of the opinion that, where a Luxembourg UCITS is no longer made available to retail investors as of 01.01.2023 and changes to the existing commitments are only subject to the contractual terms and conditions agreed before that date, a PRIIPs KID is not required.

UCITS & other UCIs (3 of 3)

16-Dec-22: CSSF updated its FAQ on the Law of 17 December 2010 and its FAQ on the Key Investor Information Document.
(continued from previous slide)

Q6.7: Are manufacturers of Luxembourg retail UCITS whose offer is closed at 31.12.2022 still required to annually update their KIIDs, even after 01.01.2023?

A6.7: Yes, Luxembourg retail UCITS whose offer is closed at 31.12.2022, shall annually update their KIIDs in accordance with the rules under the Law of 2010.

Q6.8: Do the questions and answers of the CSSF's FAQ concerning the KIID also apply to Luxembourg UCITS that issue a PRIIPs KID?

A6.8: As of 01.01.2023, the CSSF's FAQ on the KIID continue to apply to Luxembourg UCITS reserved to professional investors or to investors outside of the EU/EEA, unless the manufacturer thereof has decided to draw up a PRIIPs KID. Regarding Luxembourg retail UCITS, the CSSF considers that the PRIIPs KID replaces the KIID as of 01.01.2023. However, the CSSF's FAQ on the KIID may still be of relevance to those UCITS for certain items (e.g. authorisation procedure).

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

CSSF updated its FAQ on the Key Investor Information Document by modifying questions 2, 9 and 11, as summarized below:

Q2: Which procedure must be followed in order to file the final version of a KIID with the CSSF?

A2: The final version of a KIID must be filed by strictly adhering to the instructions provided in Circular 19/708 and Circular 11/509, as amended, and by applying the nomenclature detailed therein.

Q9: How must the final version of the KIID be filed with the CSSF?

A9: See answer A2.

Q11: Which steps must be fully completed before a UCITS may issue a unit/share class of a UCITS or compartment thereof?

A11: The following steps must be fully completed before a UCITS may issue a unit/share class in Luxembourg, or proceed with a notification for marketing of a unit/share class of a UCITS or compartment thereof in another EU host Member State: i) the CSSF has granted authorisation for the given UCITS, compartment thereof and related unit/share class; ii) the CSSF has been informed of the launch date of the unit/share class concerned; iii) the final version of the KIID relating to the unit/share class concerned have been filed with the CSSF.

AIFs

16-Dec-22: ESMA updated its Q&A on the application of the AIFMD.

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

ESMA updated its Q&A on the application of the AIFMD by adding the following:

Q: Are managers of special purpose acquisition companies ("SPACs") subject to the AIFMD?

A: SPACs are not yet legally defined in Union law. SPACs are described as shell companies that are admitted to trading on a trading venue with the intention to acquire a business in ESMA Public Statement 32-384-5209, available at:

https://www.esma.europa.eu/sites/default/files/library/esma32-384-5209_esma_public_statement_spacs.pdf

However, the structure of SPAC transactions is complex and there are significant variations between the general structuring of relevant vehicles and concrete modalities of their transactions. In light of this, it is important to assess on a case-by-case basis:

- whether SPACs meet the definition of an "AIF" as legally defined in Art. 4(1)(a) of the AIFMD, and
- whether SPACs qualify as a "holding company" in accordance with Art. 4(1)(o) of the AIFMD.

This assessment should take into account the specific features and characteristics of the individual structure of the SPAC and it should be based on substance, not form, paying close attention to the guidance provided in the ESMA Guidelines 2013/611 on key concepts of the AIFMD (the "Guidelines"), available at:

https://www.esma.europa.eu/sites/default/files/library/2015/11/2013-611_guidelines_on_key_concepts_of_the_aifmd_-_en.pdf

ESMA also notes that during the life-cycle of a SPAC, there might be circumstances which may be relevant when assessing if a SPAC qualifies as AIF, as follows:

- a SPAC does not raise capital through the IPO with a view to investing it in accordance with a defined investment policy;
- all, or substantially all, the proceeds of the IPO are used for the business combination;
- following the business combination, the SPAC has a general commercial or industrial purpose as defined in the Guidelines.

The occurrence of some or all of these circumstances may indicate that a SPAC is not an AIF as it might not meet all the elements described in the Guidelines.

ELTIFs

7-Dec-22: EC and the European Parliament reached a provisional agreement on the amending regulation to the ELTIF Regulation.

https://data.consilium.europa.eu/doc/document/ST-15768-2022-INIT/en/pdf

On 7 December 2022, the Council and the European Parliament published the text of the amending regulation to the ELTIF Regulation on which they have reached a provisional agreement. The text includes, among others, the following changes to the Commission Proposal:

- the ability for ELTIFs to invest in green bonds issued under the future EU Green Bond Standard, as well as in innovative financial undertakings (e.g. FinTechs), other than a financial holding company or a mixed-activity holding company, that are regulated entities in the first five years of their activity;
- the possibility to create a 'feeder ELTIF' which invests at least 85% of its assets in a 'master ELTIF';
- the reduction of the minimum investment threshold in eligible assets to 55% of the ELTIF capital;
- the removal of the minimum value threshold for individual real assets held by ELTIFs.

Once the Council and Parliament formally adopt this text, it will be published in the EU Official Journal and will enter into force 20 days after being published. It will apply 9 months after its entry into force.

Background

ELTIFs are the only type of funds dedicated to long-term investments that can be distributed on a cross-border basis to both professional and retail investors. However, since the adoption of the ELTIF Regulation in 2015, only a few ELTIFs have been launched due to significant constraints in the distribution process (demand-side) and stringent rules on portfolio composition (supply-side).

In their agreement, the co-legislators intend to overcome a number of supply-side and demand-side limitations. They clarified in particular the scope of eligible assets and investments, the portfolio composition and diversification requirements, the conditions for borrowing and lending of cash and other fund rules, including sustainability aspects. The package also includes rules to make it easier for retail investors to invest in ELTIFs while ensuring strong investor protection.

CSDR

17-Nov-22: ESMA updated its Q&A on the implementation of the Central Securities Depositories Regulation (CSDR).

https://www.esma.europa.eu/sites/default/files/library/esma70-708036281-2_csdr_qas.pdf

ESMA updated its Q&A on the implementation of CSDR by adding the following on “Settlement Discipline – Settlement fails”:

Q: By when should CSDs publish the information set out in Annex III of the RTS on settlement discipline, as referred to in Article 15 of the same RTS?

A: In order to ensure a level playing field, CSDs should publish the information set out in Annex III of the RTS on settlement discipline on their website for free, on an annual basis, by the end of February of each year. The first publications should take place by the end of February 2023.

MAR

25-Nov-22: ESMA updated its Q&A on the Market Abuse Regulation (MAR).

https://www.esma.europa.eu/sites/default/files/library/esma70-145-111_qa_on_mar.pdf

ESMA updated its Q&A on the Market Abuse Regulation by amending the following (added text: blue; removed text: ~~strikethrough~~):

Q6.1: Does the obligation to detect and report market abuse under Article 16(2) of MAR apply to investment firms under MiFID only or do UCITS management companies, AIFMD managers or firms professionally engaged in trading on own account also fall within the scope of that obligation?

A6.1: […] ESMA considers that the obligation to detect and identify market abuse or attempted market abuse under Article 16(2) of MAR applies broadly, and "persons professionally arranging or executing transactions" thus includes buy side firms, such as investment management firms (AIFs and UCITS managers), ~~as well as~~ firms professionally engaged in trading on own account (proprietary traders) and investment firms providing direct electronic access (DEA providers) with respect to their DEA clients' trading activity.

Non-financial firms that, in addition to the production of goods and/or services, trade on own account in financial instruments as part of their business activities (e.g. industrial companies for hedging purposes) can be considered firms professionally arranging or executing transactions in financial instruments under Article 16(2) of MAR. The fact that they have staff or a structure dedicated to systematically deal on own account, such as a trading desk, or that they execute their own orders directly on a trading venue as defined under MiFID II, are indicators to consider a non-financial firm as a person professionally arranging or executing transactions. […]

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