

Sustainable Finance update (asset management): Final SFDR RTS published and CSSF communication on SFDR RTS priority review procedure

Final SFDR RTS published

On 25 July 2022, the long-awaited final text of the so-called "SFDR RTS"¹ was published in the [Official journal](#) of the European Union.

The SFDR RTS specify the details of the content and presentation of the information in relation to the principle of "do no significant harm", the content, methodologies and presentation of information in relation to the principle adverse impact indicators (the "PAIs") and the content and presentation of the disclosures required in relation to funds subject to Articles 8 and 9 of [SFDR²](#) ("Article 8 and 9 Funds").

The SFDR RTS will apply from 1 January 2023.

CSSF confirms priority review procedure for SFDR RTS compliance by 1 January 2023

On 27 July 2022, the CSSF issued a [communication](#) to the investment fund industry on regulatory requirements in relation to SFDR and the upcoming entry into force of the SFDR RTS (the "**Communication**").

In the Communication, the CSSF (i) announces a priority review procedure for SFDR RTS compliance, (ii) recalls the regulatory deadlines and (iii) provides additional guidance regarding its expectations with respect to the form and presentation of the SFDR RTS pre-contractual and periodic templates.

1. Reminder of the deadline of 1 January 2023 for specific updates of UCITS and AIFs pre-contractual and periodic documents

From 1 January 2023, Article 8 and 9 Funds are required to use the pre-contractual and periodic disclosure templates set out in the Annexes of the SFDR RTS. From the same

date, the SFDR RTS also require detailed website product disclosures in a separate website section titled, "Sustainability-related disclosures".

On 1 January 2023, the four remaining environmental objectives referred to in Article 9, points (c) to (f) of the **Taxonomy Regulation**³ (i.e. the sustainable use and protection of water and marine resources, the transition to a circular economy, pollution prevention and control as well as the protection and restoration of biodiversity and ecosystems) will start applying and will need to be taken into account in the abovementioned disclosures (to the extent applicable).

2. Filing of updated pre-contractual documents and periodic reports with the CSSF

Pre-contractual documents

In respect of umbrella funds, the CSSF expects to receive one dedicated pre-contractual template per sub-fund. The CSSF underlines that the templates must not be amended, except as permitted by Article 2 of the SFDR RTS (i.e. the size and font type of characters and the colours). If sections of the templates are deemed not to be relevant for a given product, these sections shall nevertheless be maintained in the template with an indication that they are not applicable.

The ESAs⁴ have published Word versions of the mandatory disclosure templates on their websites (available [here](#)).

The CSSF expects to receive the updated pre-contractual documents, i.e. the prospectus/issuing documents of UCITS and/or AIFs reflecting the updates required by the SFDR RTS and the Taxonomy Regulation **by 31 October 2022 at the latest**.

The CSSF indicates that it will give priority for visa-stamping to the prospectuses/issuing documents of UCITS/AIFs for which updates are limited to reflect only the abovementioned updates. Provided that submissions made in accordance with the filing procedure described below are complete, compliant and received by the aforementioned deadline, the CSSF will endeavour to release the visa stamp by 31 December 2022.

Filing Procedure:

- **For UCITS**, the updated prospectus has to be filed for visa with an accompanying RTS confirmation letter, which the CSSF will publish shortly.
- **For regulated AIFs**⁵ being obliged or intending to publish the pre-contractual disclosure templates in an annex to their issuing document/prospectus on the basis of Article 6 (3) of SFDR, the relevant document has also to be submitted to the CSSF within the abovementioned deadline.
- **Unregulated AIFs** are not required to file any updates with the CSSF.

The updated pre-contractual documents shall be uploaded in clean and track change version. Where investors will be informed of the prospectus/issuing document update by way of a notice, this notice also needs to be submitted to the CSSF.

Periodic reports

Annual reports of UCITS and AIFs (whether these AIFs are managed by a registered or authorised AIFM) issued after 1 January 2023 have to comply with the product disclosure

requirements in periodic reports laid down in Article 11 of SFDR as further detailed by the SFDR RTS.

The CSSF also recalls that, for Luxembourg UCITS and regulated AIFs, the annual reports including the required product disclosures in periodic reports have to be filed electronically with the CSSF and that Luxembourg domiciled UCITS management companies and authorised AIFMs have to ensure that the annual reports of UCITS and AIFs they manage and which are domiciled in other jurisdictions than Luxembourg have to comply with the periodic disclosure requirements laid down in the SFDR and SFDR RTS.

3. Regulatory developments and data collection exercise

In the Communication, the CSSF also mentions, amongst other, that the launch of a Common Supervisory Action exercise (CSA) in relation to sustainability risks and disclosures is currently under discussion at ESMA level. This CSA is intended to start in the course of 2023 and will be focusing on both SFDR Level 1 and Level 2 provisions, taking into account the [ESMA Supervisory Briefing](#) on sustainability risks and disclosures in the area of investment management of 31 May 2022.

Moreover, the CSSF intends to launch a dedicated data collection exercise to digitally collect the information contained in the pre-contractual and periodic disclosure templates covering also AIFs managed by a Luxembourg AIFM which were not concerned by the filing procedure outlined above, i.e. unregulated AIFs.

- 1. Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022 supplementing Regulation (EU) 2019/2088 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the content and presentation of the information in relation to the principle of 'do no significant harm', specifying the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports.
- 2. Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector, as amended.
- 3. Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088.
- 4. i.e., the European Supervisory Authorities ESMA, EBA and EIOPA.
- 5. Luxembourg undertakings for collective investment subject to Part II of the 2010 Law, specialised investment funds (SIFs) and investment companies in risk capital (SICARs).

For any further information please contact us or visit our website at www.elvingerhoss.lu.

The information contained herein is not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific legal advice concerning particular situations.

We undertake no responsibility to notify any change in law or practice after the date of this newsletter.