

CSSF COMMUNICATION: TRANSPARENCY REQUIREMENTS AND FAST TRACK PROCEDURE FOR SFDR

On 16 December 2020, the Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a [communication](#) in relation to the new regulatory requirements contained in [Regulation \(EU\) 2019/2088](#) on the sustainability-related disclosures in the financial services sector (SFDR) and the launch of a fast track procedure for SFDR compliance.

BACKGROUND

The SFDR, which will apply (in phases) as from **10 March 2021**, explicitly requires, among others, management companies and alternative investment fund managers (IFMs) of undertakings for collective investment in transferable securities (UCITS) and alternative investment funds (AIFs) to comply with harmonised rules on transparency with regard to (i) the integration of sustainability risks into investment decisions, (ii) the consideration of adverse sustainability impacts and (iii) the disclosure of sustainability-related information.

The relevant disclosures under SFDR must be made mainly on IFMs' website and internal policies/processes, but also in the UCITS prospectus respectively via the issue investor disclosure requirements of Article 23 of AIFMD for AIFs as well as in these funds' annual reports.

CSSF CLARIFICATIONS ON SFDR TRANSPARENCY REQUIREMENTS FOR FUNDS AND IFMS

The CSSF reminds that IFMs will need to comply with the Level 1 high-level principle-based requirements laid down in the SFDR by 10 March 2021 where this is required, although the Level 2 regulatory technical standards have not yet been published.

Key Points

- Prospectuses/issue documents of UCITS/AIFs, which have been amended to comply with SFDR disclosure requirements, must be submitted to the CSSF by 28 February 2021 at the latest
- A specific SFDR fast track procedure is implemented by the CSSF to facilitate the submission, by 28 February 2021, of prospectuses/issue documents of Luxembourg UCITS and AIFs qualifying as Part II UCIs or SIFs
- To benefit from the fast track procedure, prospectus/issue document updates must be limited to changes that are exclusively required under SFDR and must be accompanied by a confirmation letter certifying that all relevant changes under SFDR have been or will be implemented by 10 March 2021 (or 30 June 2021 as applicable).

The CSSF further asks IFMs to assess their situation in order to comply with the SFDR transparency requirements, including more particularly the pre-contractual disclosure requirements that have to be implemented at product/fund level as per Articles 6 to 9 of SFDR.

SFDR pre-contractual disclosure requirements

The CSSF requires that IFMs put in place and implement by **10 March 2021** the following adequate disclosures in UCITS prospectuses, respectively inform the investors of AIFs in accordance with the disclosure requirements of Article 23 of AIFMD (which can be done through the AIFs' issue document (if any) or through other investor disclosure document), it being understood that the exact scope of such disclosures will vary as a consequence of the prior categorisation of each relevant UCITS/AIF managed as Article 8 product, Article 9 product or other financial product under SFDR:

- **Disclosures on sustainability risk integration (Article 6 SFDR)**

Any UCITS prospectus must be modified to describe, respectively the investors of any AIF must be informed of, (i) how sustainability risks are integrated into the IFM's investment decisions and (ii) to what extent these sustainability risks are likely to impact the returns of the relevant UCITS/AIF (risk assessment).

Alternatively, if the IFM's sustainability risk assessment leads to the conclusion that no sustainability risks are deemed relevant for a particular UCITS/AIF, the reasons why will have to be disclosed in that UCITS prospectus respectively be made available to the investors of that AIF.

- **Disclosures on adverse impacts (Article 7(2) SFDR)**

IFMs which are not implementing any due diligence policy with respect to the principal adverse impacts of their investment decisions on sustainability factors for a given UCITS/AIFs are further required to provide for a negative statement accompanied with a reasoned explanation for not doing it, which will be included in the relevant UCITS prospectus respectively be made available to the investors of the relevant AIF.

- **Specific disclosures for products promoting e.g. environmental or social (ESG) characteristics (Article 8 SFDR)**

The prospectus of UCITS promoting ESG characteristics must be modified to describe, respectively the investors of any AIF promoting ESG characteristics must be informed of, e.g. (i) how these ESG characteristics are met (this assumes that the relevant companies in which the investments are made follow good governance practice), or (ii), where a benchmark index has been designated, whether and how the designated index is consistent with these ESG characteristics and the methodology used for the calculation of such index.

- **Specific disclosures for products with a sustainable investment/reduction in carbon emission objective (Article 9 SFDR)**

The prospectus of UCITS which have a sustainable investment objective must be modified to describe, respectively the investors of any AIF with a sustainable investment objective must be informed of, e.g. (i) how such sustainable investment objective is achieved, or (ii) where a benchmark index has been designated, how this index is aligned with the sustainable investment objective (including an explanation as to why and how that designated index differs from a broad market index) and the methodology used for the calculation of such index.

Where a UCITS or AIF has as its objective the reduction of carbon emission, the disclosure to be included in the relevant UCITS prospectus, respectively to be communicated to the investors of the relevant AIF, will include information on the low carbon emission exposure objective.

Other SFDR transparency requirements

In addition to the above pre-contractual disclosure requirements under SFDR and the correlative update of UCITS prospectus, respectively information of AIFs investors, the CSSF reminds that IFMs should also assess their compliance with other SFDR requirements **most of which** will also apply on **10 March 2021**, and more particularly refers to:

- **the publication on the IFM's website** of the sustainability-related information as prescribed by Articles 3, 4 and 10 of SFDR;
- **the review and update (a gap analysis) of the IFM's policies and processes** in relation to sustainability risks as required by SFDR, including mainly the IFM's sustainability risk policies, investment decision process, remuneration policies and risk management process.

CSSF FAST TRACK PROCEDURE FOR SFDR DISCLOSURES TO BE MADE IN PROSPECTUS/ISSUE DOCUMENT OF UCITS AND AIFS

The CSSF requires that the prospectuses and issue documents of Luxembourg UCITS and AIFs are updated with the disclosure requirements under Article 6 of SFDR and, if applicable, Articles 7(2), 8 and 9 of SFDR, and then submitted to the CSSF with all such applicable SFDR disclosures by **28 February 2021**.

In this context, the CSSF has introduced a specific SFDR fast track procedure (SFDR Fast Track), which is available as **from 16 December 2020 until 28 February 2021**, in order to support and facilitate the submission to, and approval by, the CSSF of the anticipated important amount of prospectuses and issue documents of Luxembourg UCITS and regulated AIFs that will be amended in the next few weeks to comply with the required SFDR disclosures by the prescribed deadline.

Which UCITS/AIFs are concerned and under which conditions?

The CSSF indicates that the SFDR Fast Track will be limited to the filing for approval and visa-stamp by the CSSF of the prospectuses/issue documents of :

- All Luxembourg UCITS, and
- All Luxembourg regulated AIFs qualifying as Part II UCIs under the Luxembourg law of 17 December 2010 or as SIFs under the Luxembourg law of 13 February 2007,

provided that the updates of the prospectuses/issue documents of the above UCITS/AIFs must themselves also be limited to reflect only the changes requested under SFDR. As a result, the SFDR Fast Track will thus not be available in case of material change (within the meaning of [CSSF Circular 14/591](#)) to the investment policy and restrictions of a UCITS/AIF, in which case the traditional procedure for updating prospectuses/issue documents and have them approved and visa-stamped by the CSSF would apply. Non-material changes to the investment objectives and policy of a UCITS/AIF (or compartment(s) thereof) may however be accepted by the CSSF to some extent (e.g. editorial adjustments).

Which documents must be filed and by whom?

Practically, the SFDR Fast Track consists of filing the following information and documents with the CSSF by at least (i) one representative of the IFM (including self-managed UCITS), or (ii) the legal advisor of the IFM respectively of the UCITS/AIF, or (iii) another representative of the IFM respectively of the UCITS/AIF (Applicant):

- **SFDR disclosure confirmation letter** downloadable on the [CSSF website](#), which must be duly signed by the Applicant and which will confirm, under the responsibility of the IFM respectively of the UCITS/AIF, the conformity of the UCITS/AIF prospectus/issue document updates with, as well as the upgrade of the IFM's policies and processes in accordance with, SFDR requirements.

In order to benefit from the SFDR Fast Track¹, this letter will contain in particular contain (non-exhaustive list):

- **Certain information and confirmations in relation to the UCITS/AIF**, including a confirmation that the only changes made to the prospectus/issue document as submitted to the CSSF for visa-stamp (i) relate directly to SFDR (with explicit reference to the SFDR article(s) on the basis of which the disclosures updates have been made) and (ii) are compliant and entirely in line with the investor information that the relevant UCITS/AIF has to disclose under SFDR. Confirmation must also be given that the investment objectives and policy of the relevant UCITS/AIF (or compartment(s) thereof) have not been changed materially and that marketing communications as well as any KIID or

¹ For the sake of completeness, it appears that the confirmation letter is not only referring to the SFDR Fast Track for the CSSF visa-stamp of prospectuses/issue documents updated with the requested SFDR disclosures, but it also requires confirmations on a certain number of other SFDR requirement. This means that, even if the SFDR Fast Track is not available for a particular UCITS/AIF, such confirmation letter will nevertheless have to be addressed to the CSSF at the time of the update of that UCITS/AIF's prospectus/issue document via the traditional (i.e. non-fast track) procedure.

PRIIPs KID, where and as applicable, will be in line with and will not contradict the disclosures introduced in the prospectus/issue document of the relevant UCITS/AIF.

- **Certain information and confirmations in relation to the IFM and the actions (to be) taken by it to comply with SFDR requirements** other than the prospectus/issue document updates, including e.g. (i) a confirmation that the information about the IFM's policies on integration of sustainability risks in its investment decision process, as well as information about adverse sustainability impacts, have been or will be published on the IFM's website as prescribed under SFDR by 10 March 2021 (or 30 June 2021 where applicable), and (ii) a confirmation that the IFM's investment decision process, remuneration policies and risk management process have been or will be reviewed and updated as required by SFDR by 10 March 2021.
- **A clean and mark-up versions of the prospectus/issue document** of the relevant UCITS/AIF evidencing the changes made as per the SFDR requirements.
- **Where applicable, a notice to inform the investors** of the relevant UCITS/AIF of the prospectus/issue document updates.

What are the timing and practical aspects?

As regards the timing and technical aspects of the SFDR Fast Track, the CSSF indicates that the above documents must be transmitted electronically by the Applicant to the CSSF by **28 February 2021**.

This transmission must be made by using the "e-file"/"SOFIE" channels in accordance with [CSSF Circular 19/708](#) concerning the electronic transmission of documents to the CSSF.

If the documents so transmitted to the CSSF are satisfactory, the visa-stamped prospectus/issue document will be returned through e-file/SOFIE. In case of unsatisfactory filing, the CSSF will notify this also through e-file/SOFIE, by requesting the filing of a new revised prospectus/issue document for the relevant UCITS/AIF.

HOW CAN CLIFFORD CHANCE HELP WITH ESG?

We are on hand to help investment funds and their managers navigate the fast-changing landscape of ESG frameworks at both international and national level. In particular, our global ESG Board aims to ensure that our clients benefit from our collective experience by drawing together our cross-disciplinary and cross-jurisdiction expertise. You can find more information about ESG developments in our [Green and Sustainable Finance Topic Guide](#) and more information about our ESG offering on our [website](#).

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