

GREAT FUND INSIGHTS

Taxonomy Regulation disclosures: Luxembourg guidance for funds and asset managers

On 2 December 2021, the CSSF published a **communiqué** to remind financial market participants under the **Taxonomy Regulation** of certain Taxonomy Regulation pre-contractual disclosures required before 1 January 2022 and to offer a fast-track procedure for UCITS prospectuses.

The Taxonomy Regulation entered into force on 12 July 2020 but the application of certain transparency requirements was delayed for certain green financial products qualifying as article 8 (so-called Light Green Products) and article 9 (so-called Dark Green Products) under the **Sustainable Financial Disclosure Regulation (SFDR)** to 1 January 2022 and to 1 January 2023 depending on their environmental objective.

The CSSF has implemented a fast-track procedure for UCITS prospectus updates reflecting the disclosures under articles 5, 6 and 7 of the Taxonomy Regulation, which correspond to financial products under respectively articles 9, 8 and 6 under SFDR. In addition, the CSSF recommends financial markets participants to use as far as possible and on a best effort basis the templates for pre-contractual and periodic disclosures of Articles 8 and 9 financial products included in the ESA's **final report on draft Regulatory Technical Standards** with regard to the content and presentation of disclosure under Articles 8(4), 9(6) and 11(5) of SFDR (the **RTS**).

This alert focuses on the Taxonomy Regulation pre-contractual and periodic disclosures for funds and asset managers.

Which funds are in the scope of the Taxonomy Regulation and what disclosures are required?

The SFDR defines **Sustainable Investment** as an investment in an economic activity that contributes to an environmental or social objective, provided that the investment does not significantly harm any environmental or social objective and that the investee companies follow good governance practices.

The Taxonomy Regulation was adopted to introduce a taxonomy or classification system establishing a list of environmentally sustainable economic activities to harmonise the interpretations given by Member States to sustainable investment contributing to an environmental objective. Sustainable Investments with an environmental objective may be taxonomy-aligned (**Environmentally Sustainable Investments**) or not. The taxonomy sets the criteria for an economic activity to be considered as environmentally sustainable and the degree to which an economic activity is environmentally sustainable. For the time being, the Taxonomy Regulation does not include a list of “socially sustainable activities”.

Thus, an economic activity is environmentally sustainable (or taxonomy-aligned) if it:

- contributes substantially to one or more of the following environmental objectives (the **Environmental Objectives**):
 - a) climate change mitigation
 - b) climate change adaptation;
 - c) the sustainable use and protection of water and marine resources;
 - d) the transition to a circular economy;
 - e) pollution prevention and control; or
 - f) the protection and restoration of biodiversity and ecosystems.
- does not significantly harm any of the Environmental Objectives (in accordance with Article 17 of the Taxonomy Regulation);
- complies with the minimum social safeguards (listed in Article 18 of the Taxonomy Regulation); and
- complies with certain technical screening criteria (**TSC**) defined under the Taxonomy Regulation.

SFDR qualification		Taxonomy Regulation	Specific information to be disclosed in pre-contractual and periodic disclosures	Deadline
Article 6 Fund		Article 7	Negative statement (Article 7 of the Taxonomy Regulation) to include “The investments underlying this financial product do not take into account the EU criteria for environmentally sustainable economic activities”.	In our view, before 1 January 2022, unless already included on the entry into force of the SFDR (10 March 2021) Fast-Track Procedure available for UCITS if the update was not made before.
Article 8 Fund or “Light Green Fund”	which has a social objective or has social characteristics	NA	None under the Taxonomy Regulation, yet. Optional: You may provide additional transparency disclosures based on the RTS or complete the RTS pre-contractual disclosure template on the entry into force of the RTS (expected to be 1 January 2023).	NA
	with environmental characteristics or Environmental Objective(s) and which makes no Environmentally Sustainable Investments	NA		NA
	which makes Environmentally Sustainable Investments that contribute to at least one of these Environmental Objectives : a) climate change mitigation; b) climate change adaptation; c) the sustainable use and protection of water and marine resources; d) the transition to a circular economy; e) pollution prevention and control; f) the protection and restoration of biodiversity and ecosystems.	Article 6	– information on the Environmental Objective to which the underlying investment of the fund contributes; – a description on how and to what extent the underlying investments are in economic activities that qualify as “environmentally sustainable” under the Taxonomy Regulation and the proportion of investments in environmentally sustainable activities and enabling and transitional activities; and – statement to be included: “The ‘do no significant harm’ principle applies only to those investments underlying the financial product that take into account the EU criteria for environmentally sustainable economic activities. The investments underlying the remaining portion of this financial product do not take into account the EU criteria for environmentally sustainable economic activities”. Note: For products which intend to be taxonomy-aligned but that do not currently have investments that qualify as such due mainly to the lack of data from such underlying investments, the CSSF encourages the use of the relevant RTS templates as of now during the transitional period until the RTS become effective as far as possible and on a best effort basis”.	1 January 2022 in respect of Environmental Objectives (a) and (b) 1 January 2023 in respect of Environmental Objectives (c) to (f)

SFDR qualification		Taxonomy Regulation	Specific information to be disclosed in pre-contractual and periodic disclosures	Deadline
Article 9 Fund or “Dark Green Fund”	which has a social objective	NA	NA Optional: You may provide additional transparency disclosures based on the RTS or complete the RTS pre-contractual disclosure template during the transitional period before the entry into force of the RTS (expected to be 1 January 2023).	NA
	with Environmental Objective(s) which makes no Environmentally Sustainable Investments	NA	None Optional: You may provide additional transparency disclosure based on the RTS or complete the RTS pre-contractual disclosure template during the transitional period before the entry into force of the RTS (expected to be 1 January 2023).	
	which makes Environmentally Sustainable Investments that contributes to at least one of the following Environmental Objectives : a) climate change mitigation b) climate change adaptation c) the sustainable use and protection of water and marine resources; d) the transition to a circular economy; e) pollution prevention and control; f) the protection and restoration of biodiversity and ecosystems.	Article 5	– information on the Environmental Objective (ie climate change mitigation or adaptation) to which the underlying investments of the fund contribute; and – a description on how and to what extent the underlying investments are in economic activities that qualify as “environmentally sustainable” under the Taxonomy Regulation, as well as the proportion of investments in environmentally sustainable activities and enabling and transitional activities. Note: For products which intend to be taxonomy-aligned but that do not currently have investments that qualify as such due mainly to the lack of data from such underlying investments, the CSSF encourages the use of the relevant RTS templates as of now during the transitional period until the RTS become effective “as far as possible and on a best effort basis”.	1 January 2022 in respect of Environmental Objectives (a) and (b) 1 January 2023 in respect of Environmental Objectives (c) to (f)

Which funds should financial market participants notify to the CSSF?

The Taxonomy Regulation applies, *inter alia*, to financial market participants which make available financial products. Financial market participants include notably EU managers of funds, ie UCITS management companies, AIFMs (including of ELTIFs) and managers of EuVECA and EuSEFs.

Under the Taxonomy Regulation¹, Member States shall ensure that the relevant competent authorities monitor compliance with articles 5, 6 and 7 of the Taxonomy Regulation and have the necessary supervisory and investigatory powers in that respect.

The CSSF is the supervisory authority of Luxembourg UCITS management companies and AIFMs and is therefore competent to verify the updates in relation to these financial products:

- Luxembourg UCITS;
- Luxembourg regulated (Part II UCIs/SIFs/SICARs) or unregulated (RAIFs, unregulated LPs) AIFs managed by Luxembourg authorised or registered AIFMs;
- Luxembourg ELTIFs;
- foreign AIFs managed by Luxembourg authorised or registered AIFMs; and
- EuVECA or EuSEF managed by Luxembourg managers.

The disclosures are required in relation to the above funds, which are open-ended or closed-ended and still in the fundraising/subsorption period.

Where should the disclosures be made?

Financial market participants are required to disclose the information listed in the table:

- in the prospectus of UCITS and the pre-contractual documents of AIFs (ie the disclosures referred to in article 23 (1) of the AIFMD); and
- in the annual reports of UCITS and AIFs.

When to make the pre-contractual disclosures?

The CSSF has updated its communiqué to clarify that only UCITS prospectuses may benefit from a fast-track procedure. Updated UCITS prospectuses submitted before 17 December 2021 will receive a visa stamp prior to 31 December 2021, if the changes are limited to those required under Articles 5, 6 and/or 7 of the Taxonomy Regulation.

AIFs may submit to the CSSF their pre-contractual disclosures before 31 December 2021.

How to make the pre-contractual disclosures?

The CSSF distinguishes between two notification procedures depending on the type of financial products:

UCITS

UCITS or their management company must send to the CSSF an updated UCITS prospectus along with the CSSF template **confirmation letter**.

AIFs including ELTIFs, EuSEFs and EuVECAs

Luxembourg authorised or registered AIFMs, managers of EuSEFs and EuVECA must send in relation to the EU AIFs they manage (including RAIFs, unregulated LPs and non-Luxembourg AIFs) at **opc@cssf.lu**:

- the specific information under SFDR and the Taxonomy Regulation to be disclosed to investors;
- where the information was disclosed to investors (whether in the fund documents or a separate document); and
- any future updates in this regard.

The CSSF will handle the prospectus updates of Luxembourg ELTIFs swiftly on a case-by-case basis.

AIFs managed by non-Luxembourg based AIFMs

For AIFs with a non-Luxembourg authorised or registered AIFM, the requirements of the AIFM competent authority shall apply.

1. Article 21 of the Taxonomy Regulation