

ATOZ NEWS

Sustainability-related disclosures – Recent communication from the CSSF on the implications of Regulation 2019/2088

30 November 2020

Fund managers to comply with sustainability-related disclosures and to update their prospectus by 10 March 2021 despite the lack of harmonised, regulatory technical standards.

On 6 November 2020, the Luxembourg financial supervisory authority (the **CSSF**) brought to the attention of financial market participants and financial advisers the letter addressed on 20 October 2020 by the European Commission (the **Letter**) to the European Banking Authority (the **EBA**), the European Insurance and Occupational Pensions Authority (the **EIOPA**) and the European Securities and Markets Authority (the **ESMA**, and together with the EBA and the EIOPA, the European supervisory authorities or **ESAs**) regarding the application of the Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (the **Regulation**, or the **SFDR**). In the Letter, the European Commission stressed that *“given the scale and challenge of the risks posed by climate change and the degradation of the environment and other sustainability matters, strong action and increased effort from all actors, including the financial services sector, are urgently required. In order to mobilise the necessary financial capital, it is vital that it is made easier for investors to identify the adverse impacts of their investments on sustainability factors. It is also essential that the credibility of sustainable investments and general awareness of sustainability risks be improved. Regulation (EU) 2019/2088 is a crucial element in achieving these objectives.”*

The SFDR sets harmonised rules for financial market participants and financial advisers (such as alternative investment fund managers, UCITS management companies, managers of a qualifying venture capital fund or a qualifying social entrepreneurship fund, credit institutions, etc.) on transparency with regard to the integration of sustainability risks and the consideration of adverse sustainability impacts in their processes and the provision of sustainability-related information with respect to financial products.

Pursuant to the SFDR, where financial market participants, taking due account of their size, the nature and scale of their activities and the types of financial products they make available, consider principal adverse impacts, whether material or likely to be material, of investment decisions on sustainability factors, they should integrate in their processes, including in their due diligence processes, the procedures for considering the principal adverse impacts alongside the relevant financial risks and relevant sustainability risks.

It is worth noting that the consideration of sustainability factors in investment decision-making and advisory processes is meant to realise benefits beyond financial markets. As stated in the Regulation, *“it can increase the resilience of the real economy and the stability of the financial system. In so doing, it can ultimately impact on the risk-return of financial products. It is therefore essential that financial market participants and financial advisers provide the information necessary to enable end investors to make informed investment decisions”*.

The initial and ambitious timeframe for the SFDR included the joint development by the ESAs of draft regulatory technical standards by 30 December 2020 and the application of the SFDR as from 10 March 2021.

However, the unprecedented economic and market stress caused by the COVID-19 crisis has necessitated an extension of the deadline for the public consultation on the draft regulatory technical standards. In its Letter, the European Commission states that *“while the delay is unfortunate, it is justified by the need to guarantee sufficient stakeholder involvement in the process given the current difficult circumstances. This extension will allow stakeholders the time needed to properly address the complex issues contained in the joint consultation paper. At the same time, this delay in the consultation process will not detract from the importance of the Regulation in making the European economy future-proof”*.

Despite this delay, the Commission made it clear that *“the application of the Regulation is not conditional on the formal adoption and entry into force or application of the regulatory technical standards”*.

The Commission is of the opinion that the SFDR requires transparency and that no further regulatory technical standards are foreseen for disclosure obligations on the integration of sustainability risks at product level, or sustainability risk policies and remuneration policies at entity level. Moreover, with regard to the integration of sustainability risks in the investment decision-making process, financial market participants must, in accordance with the applicable sectoral legislation, already consider sustainability risks in their internal processes.

Therefore, financial market participants and financial advisers subject to the Regulation will need to comply with its high level and principle-based requirements as from 10 March 2021, and national competent authorities will have to prepare for the orderly and effective supervision of compliance by financial market participants and financial advisers.

Acknowledging the arising difficulties in complying with the SFDR, the CSSF is expected to launch a fast track procedure whereby the CSSF will likely rely on financial market participants to self-certify their compliance with the SFDR. In practice, it means that fund managers will have to disclose the negative environmental or social impacts of their investments and most likely have to proceed with an update of their prospectus by 10 March 2021 despite the difficulty to get available, sensitive and accurate information from the companies they are investing in, especially in a context where harmonised technical rules are not yet available.

Can we help? Do you have further questions?



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