

ATOZ ALERT

CSSF introduces a fast track procedure for disclosures under the Taxonomy Regulation

7 December 2021

The Taxonomy Regulation requires Luxembourg investment fund managers (“IFMs”) to update the fund documentation for the alternative investment funds (“AIFs”) and/or undertakings for collective investment in transferable securities (“UCITS”) they manage, in order to provide information related to environmentally sustainable investments or to funds that promote environmental characteristics. Luxembourg IFMs have until 1 January 2022 to comply with the transparency requirements. The CSSF has introduced a fast track procedure that can be used until 17 December 2021.

The CSSF implemented a fast track procedure (“**TR FastTrack**”) that IFMs (and other financial market participants subject to its supervision) can use if they have not yet submitted certain required updates to the pre-contractual documents of UCITS and/or AIFs in accordance with the Taxonomy Regulation¹. The sustainable investments transparency disclosure rules apply as from 1 January 2022 and the TR FastTrack procedure is available to Luxembourg IFMs until 17 December 2021.

The **Luxembourg based IFMs** concerned by the TR FastTrack are:

- authorised alternative investment fund managers (“**AIFMs**”), for each AIF managed;
- registered AIFMs, for each AIF managed;
- managers of European Venture Capital (“**EuVECA**”) funds and European Social Entrepreneurship Funds (“**EuSEF**”) registered by the CSSF;
- managers of Luxembourg European Long-Term Investment Funds (“**ELTIFs**”); and
- UCITS management companies.

¹ 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.

The CSSF insisted that the updates to the pre-contractual documents must be limited to reflect only the changes required under the Taxonomy Regulation, otherwise the IFMs will not benefit from the TR FastTrack procedure.

According to the Taxonomy Regulation, Luxembourg IFMs are required to transparently disclose if the funds they manage pursue the environmental objectives of climate change mitigation or climate change adaptation. The funds concerned by these disclosures are those subject to Article 8 (i.e., funds that promote environmental or social characteristics - among other characteristics) or Article 9 (i.e., funds that have a sustainable investment or the reduction in carbon emissions as their objective) of the SFDR².

Under the Taxonomy Regulation, the IFMs must disclose the required information in the manner provided for in the SFDR, i.e., via pre-contractual disclosures and in periodic reports. For the AIFs, the pre-contractual disclosures are those that need to be provided to investors in accordance with the AIF rules or instruments of incorporation before they invest in the AIF or when material changes are made. For UCITS and ELTIFs, the information must be disclosed in the prospectus.

The type of information to be disclosed is set out in the Taxonomy Regulation. Luxembourg IFMs must include the information on the environmental objective(s) of climate change mitigation or climate change adaptation which the underlying investment of a fund contributes to or which it promotes, as well as a description of how and to what extent the underlying investments is in economic activities that qualify as environmentally sustainable under the Taxonomy Regulation. Luxembourg IFMs must also quantify the percentage represented by the investments in environmentally sustainable economic activities out of all the investments of a given fund.

If the fund managed is not subject to Article 8 or 9 of the SFDR, the Luxembourg IFM should include a statement in the pre-contractual disclosures and in the annual reports to confirm that the underlying investments of the fund do not take into account the EU criteria for environmentally sustainable economic activities.

With respect to AIFs, a Luxembourg supervised AIFM must provide to the CSSF, via email, only the information it is required to disclose to investors in pre-contractual disclosures under the SFDR and the Taxonomy Regulation. It must also clearly indicate where said specific information has been disclosed to investors, as well as inform the CSSF via email of any future updates.

The Luxembourg based AIFs managed by an AIFM which is not supervised by the CSSF should apply the requirements imposed by the AIFM's competent authority.

As far as UCITS are concerned, under the TR FastTrack procedure the Luxembourg IFM must submit the updated prospectus and a confirmation letter (a template of which was made available on the regulator's website) to the CSSF. If the submission, complete and compliant with the Taxonomy Regulation, is filed by 17 December 2021 at the latest, the CSSF will endeavour to release the visa stamp prior to 31 December 2021. For Luxembourg ELTIFs, the CSSF will handle the necessary updates in the prospectus swiftly on a case-by-case basis.

In addition, in relation to the pre-contractual disclosures required under the SFDR, the CSSF highly encouraged Luxembourg IFMs to use, as of now, the existing draft regulatory technical standards (“RTS”) and the templates therein, even though their application date might be delayed until 1 January 2023. During the transitional period, they should fill in the templates as far as possible and on a best effort basis.

² 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.

Do you have further questions?



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