MIZUHO

Regulatory News

Q1 2023

Japan Fund Management (Luxembourg) S.A.

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Ukraine Crisis

28-Mar-23: CSSF updated its webpage compiling all the relevant information for the financial sector in relation to the Ukraine crisis.

https://www.cssf.lu/en/ukraine-crisis/

The CSSF maintains a webpage compiling all the relevant information for the financial sector in relation to the Ukraine crisis. The webpage relates to the CSSF's effort to draw attention of the professionals of the financial sector subject to its supervision to the restrictive measures decided by the EU in response to the current situation in Ukraine. The webpage is regularly updated as the situation continues to evolve. It currently comprises the following sections:

- **Laws, regulations and directives**, which includes EU regulations binding in their entirety and directly applicable in national law, such as:
  - Council Implementing Regulation (EU) 2023/571 of 13 March 2023 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine: http://data.europa.eu/eli/reg_impl/2023/571/oj

- **Other reference texts**, which currently includes:
  - EU Best Practices for the effective implementation of restrictive measures: https://data.consilium.europa.eu/doc/document/ST-10572-2022-INIT/en/pdf
  - FAQs on Russia-Ukraine war and ECB Banking Supervision: https://www.bankingsupervision.europa.eu/press/publications/html/ssm.faq_Russia_Ukraine_war_and_Banking_Supervision~8360ccdf6f.en.html
  - FAQs regarding International Financial Sanctions: https://www.cssf.lu/wp-content/uploads/FAQ_International_financial_sanctions.pdf

- **Publications**, which includes among others:
  - Council Decision (EU) 2022/2332 of 28 November 2022 on identifying the violation of Union restrictive measures as an area of crime that meets the criteria specified in Article 83(1) of the Treaty on the Functioning of the EU: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022D2332

- **Useful links**, which currently provides direct access to:
  - EU sanctions adopted following Russia's military aggression against Ukraine (incl. FAQ): https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/restrictive-measures-sanctions/sanctions-adopted-following-russias-military-aggression-against-ukraine_en
  - EU Sanctions Whistleblower Tool: https://eusanctions.integrityline.com
  - EU Sanctions Map of the European Commission in order to keep abreast of the sanctions regime into force: https://sanctionsmap.eu/#/main

Sustainable Finance (1 of 7)

26-Jan-23: ESAs published their respective opinions on the first set of European Sustainability Reporting Standards (ESRS).

https://www.esma.europa.eu/sites/default/files/2023-01/ESMA32-334-589_Opinion_on_ESRS_Set_1.pdf

On 23 November 2022, the first set of European Sustainability Reporting Standards (ESRS) was published by the European Financial Reporting Advisory Group (EFRAG). ESRS Set 1 contains 12 ESRS which apply to large undertakings and are distributed across 2 general standards ('General principles' and 'General information') and 10 topical standards (5 environmental matters in relation to the objectives set out in the Taxonomy Regulation; 4 social matters regarding workforce, workers in the value chain, communities and consumers; and 1 governance matter regarding business conduct).

ESMA's assessment is based on 4 main criteria:

1. **Quality of material sustainability information:** capable of promoting disclosures reflecting the way undertakings internally identify, assess and manage impacts, risks and opportunities allowing users of those sustainability statements to identify material impacts, risks and opportunities of the undertakings.
2. **Consistency of application in terms of content and format:** capable of facilitating the understanding of how undertaking's disclosures should be prepared and that it can be subject to assurance, supervision and enforcement in accordance with the European Single Electronic Format (ESEF) Regulation.
3. **Consistency and interoperability with other EU legislation:** consistent and interoperable with SFDR, benchmark requirements, Article 8 of the Taxonomy Regulation, and other relevant EU legislation.
4. **Interoperability with global standard-setting initiatives for sustainability reporting:** interoperable with disclosure requirements, terminology and definitions of the IFRS Sustainability Disclosure Standards and the GRI standards.

ESMA concludes that ESRS Set 1 broadly meets the objective of being conducive to investor protection and not undermining financial stability. However, ESMA identified certain issues with Set 1 and advises the Commission to address them to ensure that Set 1 fully meets the aforementioned objective.

- **Recommendations to be addressed ideally before adopting Set 1:** ensure that there are no behavioural requirements, reconsider certain topics such as trade secrets, the 250-employee threshold for the S standards, phase-in requirements in relation to environmental standards, and clarify that undertakings should disclose actions to prevent or mitigate potential negative impacts, as well as their methodologies and main assumptions behind metrics and targets.
- **Recommendations to be addressed ideally before adopting Set 2:** provide guidance on the materiality assessment process and operational control, separate disclosure of impacts and risks and opportunities and develop a mapping between Set 1 and IFRS Sustainability Disclosures and GRI standards.

Sustainable Finance (2 of 7)

01-Feb-23: CSSF launched a data collection exercise for investment fund managers on regulatory requirements in relation to SFDR.

https://www.cssf.lu/en/2023/02/sfdr-data-collection-exercise-for-investment-fund-managers-ifms-on-regulatory-requirements-in-relation-to-regulation-eu-2019-2088-on-sustainability-related-disclosures-in-the-financial-services-se/

Context: SFDR requires IFMs qualifying as financial market participants and/or financial advisers to comply with the set of disclosures rules regarding the integration of sustainability risks in their activities applicable by 10 March 2021. Within the scope of its supervisory duties, this exercise will allow the CSSF to assess IFMs compliance with the requirements under SFDR and SFDR RTS.

Scope: The following Luxembourg-domiciled entities are required to complete a dedicated questionnaire:

- UCITS management companies and self-managed investment companies;
- Authorised AIFMs and internally managed AIFs;
- Managers of a qualifying European Venture Capital Fund (EuVECA);
- Managers of a qualifying European Social Entrepreneurship Fund (EuSEF).

The questionnaire covers the expectations from the CSSF that IFMs take due account of the integration of sustainability risks in their organisational arrangements. The themes covered are in relation with human resources and governance, investment decisions or advice process, remuneration and risk management policies as well as the management of conflict of interests and mandatory website disclosures requirements.

Technical details: The questionnaire is available in the new eDesk module “SFDR-IFM disclosures”. The deadline for submission of the initial questionnaire was 2 March 2023. After the initial declaration and in case of changes, IFMs shall remain responsible to ensure that the information provided is being kept up-to-date.

Additional information: The current data collection exercise will be extended in the near future to collect information contained in the PAI statements and in the precontractual and periodic disclosure templates.

Sustainable Finance (3 of 7)

20-Feb-23: Entry into force of the amended SFDR RTS (Commission Delegated Regulation EU 2023/363 of 31 October 2022).

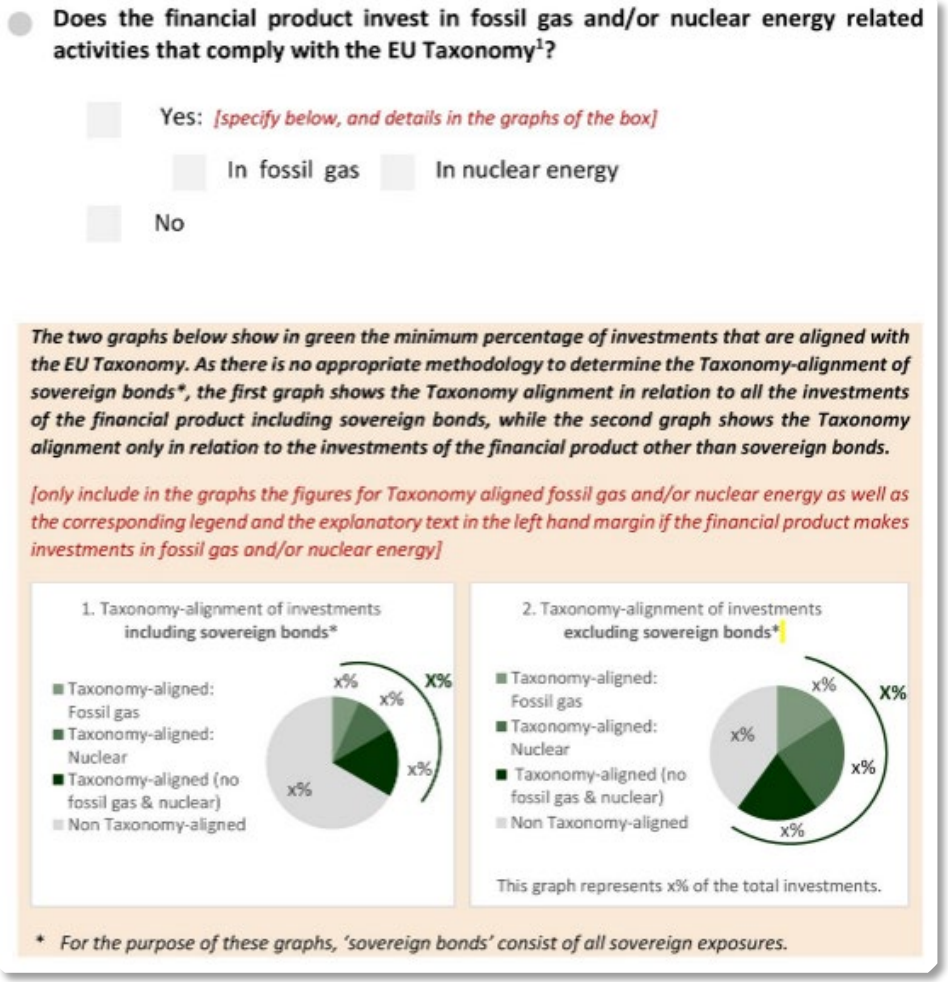
http://data.europa.eu/eli/reg_del/2023/363/oj

On 20 February 2023, the Commission Delegated Regulation EU 2023/363 entered into force.

The revised templates introduced new disclosures obligations for precontractual and periodic annexes, which include the exposure to investments in **fossil gas** and **nuclear energy** related economic activities expressed as a proportion of all investments (see excerpt on the right).

Background

On 31 October 2022, the European Commission adopted the Commission Delegated Regulation (EU) 2023/363 amending existing SFDR Level 2 Regulations, which introduced new disclosures obligations related to the exposure of financial products to investments in Taxonomy-aligned fossil gas and nuclear energy related economic activities.



Does the financial product invest in fossil gas and/or nuclear energy related activities that comply with the EU Taxonomy[1]?

Yes: *[specify below, and details in the graphs of the box]*

In fossil gas In nuclear energy

No

The two graphs below show in green the minimum percentage of investments that are aligned with the EU Taxonomy. As there is no appropriate methodology to determine the Taxonomy-alignment of sovereign bonds*, the first graph shows the Taxonomy alignment in relation to all the investments of the financial product including sovereign bonds, while the second graph shows the Taxonomy alignment only in relation to the investments of the financial product other than sovereign bonds.

[only include in the graphs the figures for Taxonomy aligned fossil gas and/or nuclear energy as well as the corresponding legend and the explanatory text in the left hand margin if the financial product makes investments in fossil gas and/or nuclear energy]

1. Taxonomy-alignment of investments **including sovereign bonds***

- Taxonomy-aligned: Fossil gas
- Taxonomy-aligned: Nuclear
- Taxonomy-aligned (no fossil gas & nuclear)
- Non Taxonomy-aligned

x% x% X% x% x%

2. Taxonomy-alignment of investments **excluding sovereign bonds***

- Taxonomy-aligned: Fossil gas
- Taxonomy-aligned: Nuclear
- Taxonomy-aligned (no fossil gas & nuclear)
- Non Taxonomy-aligned

x% X% x% x% x%

This graph represents x% of the total investments.

* *For the purpose of these graphs, 'sovereign bonds' consist of all sovereign exposures.*

Sustainable Finance (4 of 7)

10-Mar-23: EFRAG issued a set of Basis for Conclusions to complement the first set of draft ESRS.

https://efrag.org/news/public-410/EFRAG-issues-the-set-of-Basis-for-conclusions-for-its-first-set-of-draft-ESRS

On 10 March 2023, the EFRAG issued a set of Basis for Conclusions to complement the first set of draft ESRS, reflecting the input from the public consultation on the ESRS Exposure Drafts. The Basis for Conclusions accompanies but is not part of the ESRS Set 1 Drafts and, as such, its content has no authoritative status.

- As part of the recommendations from ESMA on the ESRS Set 1 Drafts, to ensure they are conducive to investor protection and not undermining financial stability, the Basis for Conclusions provide further guidance for undertakings on how to report sustainability information and map the standards with the IFRS Sustainability Disclosures and the GRI standards.

- They illustrate the objective and context of the 12 standards, the process followed in their preparation and the reasons to include those disclosure requirements, the alternatives considered as well as the references to other standard-setting initiatives or other relevant regulations and the argument supporting the need for granular guidance.

- The EFRAG also issued a set of educational videos in order to guide undertakings for the preparation of their reporting. For each standard, EFRAG sustainability reporting experts offer two videos: one providing an introduction on the drafts standards, and one delivering an educational session with technical details.

Background

The reporting requirements under the Corporate Sustainability Reporting Directive (CSRD) will be phased in over time for different kinds of companies. The first companies will have to apply the standards in financial year 2024, for reports published in 2025. Listed SMEs are obliged to report as from 2026, with a further possibility of voluntary opt-out until 2028, and will be able to report according to separate, proportionate standards that EFRAG will develop next year.

Sustainable Finance (5 of 7)

13-Mar-23: CSSF updated its FAQ on the SFDR.

https://www.cssf.lu/wp-content/uploads/FAQ_SFDR.pdf

On 13 March 2023, the CSSF updated its FAQ on the SFDR to include three new questions under the Section III 'Pre-contractual disclosures':

- **Use of ESG and sustainability related terminology in fund names:** FMPs which are disclosing under Articles 6, 8 or 9 SFDR shall use fund names which are not misleading and aligned with the relevant fund's investment objective and policy and with the relevant principles-based guidance on fund names in the ESMA Supervisory Briefing (https://www.esma.europa.eu/sites/default/files/library/esma34-45-1427_supervisory_briefing_on_sustainability_risks_and_disclosures.pdf).

- **Disclosure to investors of the methodology used to define sustainable investments:** While awaiting further clarification at European level, the CSSF expects that the methodology used for the definition of a sustainable investment within the meaning of Article 2(17) SFDR, as well as, where applicable, the applied thresholds (e.g. the threshold used when applying a pass-fail approach), be made available by FMPs to investors via appropriate means.

- **Efficient portfolio management ("EPM") techniques falling within the "remaining portion" of the investment portfolio of Article 9 SFDR funds:** the CSSF considers that when used for hedging purposes, EPM techniques fall within the "remaining portion" of the investment portfolio of funds disclosing under Article 9 SFDR, provided that those are in line with the sustainable investment objective of the fund.

The CSSF also added a new hyperlink in Section I 'Key European and CSSF publications' (https://www.cssf.lu/en/2023/02/sfdr-data-collection-exercise-for-investment-fund-managers-ifms-on-regulatory-requirements-in-relation-to-regulation-eu-2019-2088-on-sustainability-related-disclosures-in-the-financial-services-se/) regarding the data collection exercise for IFMs on regulatory requirements in relation to SFDR.

Background

On 2 December 2022, the CSSF published its FAQ on SFDR which applies to Financial Market Participants (AIFMs, UCITS Management Companies, managers of a qualifying EuVECA, and managers of a qualifying EuSEF) and Financial Products (AIFs and UCITS) as referred to under Art. 2 SFDR.

Sustainable Finance (6 of 7)

13-Mar-23: ESAs and ECB jointly published a statement on disclosure on climate change for structured finance products.

https://www.esma.europa.eu/sites/default/files/library/ESAs_ECB%20Joint%20Statement%20on%20disclosures%20for%20securitisations_FINAL_6%20March%202023_0.pdf

As investment in financial products meeting high ESG standards is increasingly important in the EU and worldwide, it has also become a priority for structured finance products to disclose climate-related information on the underlying assets, in particular for securitisations that are backed by the same type of underlying assets. Securitisation transactions are often backed by assets that could be directly exposed to physical or transition climate-related risks, hence the value of those assets could be affected by climate-related events and indirectly impact the value of securitised assets.

The ESAs have been developing templates for voluntary sustainability-related disclosures for “simple, transparent and standardised” (STS) securitisations, and are currently reviewing the SFDR Delegated Regulation to enhance ESG disclosures by financial market participants, including to require additional disclosures on decarbonisation targets. ESMA, with the contribution of EBA, EIOPA and the ECB, is hence working towards enhancing disclosure standards for securitised assets by including proportionate and targeted climate change-related information. The ESAs and the ECB also call on issuers, sponsors and originators of such assets at EU level to proactively collect high-quality and comprehensive information on climate-related risks during the origination process.

The ESAs and the ECB share the view that the reporting on existing climate-related metrics needs to improve and that additional metrics are necessary for the following reasons:

- Lack of climate-related data on the assets underlying structured finance products poses a problem for properly assessing and addressing climate-related risks, and impedes the classification of products and services as sustainable under the Taxonomy Regulation and the SFDR.
- Asset-backed securities constitute one of the most important asset classes mobilised by counterparties as collateral in Eurosystem credit operations, and the Eurosystem, with its asset-backed securities purchase programme (ABSPP), has also become one of the largest investors in such assets in the Euro area.
- Consistent and harmonised requirements for these instruments are necessary for properly assessing and addressing climate-related risks, ensuring a level playing field across similar asset classes, fostering comparability for investors and facilitating equal treatment by EU supervisors.

Sustainable Finance (7 of 7)

24-Mar-23: CSSF released a communiqué on SFDR data collection exercise applicable to investment fund managers (IFMs) and institutions for occupational retirement provision (IORPs) on precontractual disclosures in accordance with SFDR, TR and the SFDR RTS.

https://www.cssf.lu/en/2023/03/sfdr-data-collection-exercise-applicable-to-investment-fund-managers-ifms-and-institutions-for-occupational-retirement-provision-iorps-on-precontractual-disclosures-in-relation-to-regulation-eu/

Context: IFMs and IORPs qualifying as financial market participants are required to include sustainability-related information in the precontractual disclosures of financial products in accordance with SFDR, TR and the SFDR RTS. The objective of the current data collection exercise is to collect, in a digital format, information contained in precontractual disclosure documents/templates.

Scope: The following financial market participants are required to participate to the data collection exercise:

- UCITS management companies, based in Luxembourg or in another EU Member State, in relation to all Luxembourg-domiciled UCITS they manage;
- Authorised AIFMs, based in Luxembourg, in relation to all Luxembourg-domiciled regulated and unregulated AIFs (including ELTIFs) they manage;
- Authorised AIFMs, based in another EU Member State, in relation to all Luxembourg-domiciled regulated AIFs, as well as Luxembourg-domiciled unregulated AIFs (only when they qualify as ELTIFs) they manage;
- Registered AIFMs, based in Luxembourg or in another EU Member State, in relation to all Luxembourg-domiciled regulated AIFs they manage;
- IORPs.

The data is to be provided to the CSSF for each fund/sub-fund, regardless of the regime applicable under SFDR (i.e. SFDR Article 6, Article 8 or Article 9). Additional clarifications on the content and format of the data to be reported, as well as technical details on the data collection process, are included in a dedicated user guide available at: https://www.cssf.lu/fr/Document/collecte-de-donnees-opc-sfdr-guide-pratique-et-technique/

Technical details: The data can be submitted to the CSSF either via a structured file through the S3 (“simple storage service”) protocol, which allows for an automation of the submissions, or via eDesk through manual data inputs. The deadline for submission of the initial questionnaire is **15 June 2023**. After the initial declaration, IFMs and IORPs remain responsible to ensure that the information provided is being kept up-to-date; in case of changes to the precontractual documents/templates, IFMs and IORPs must update the data reported by transmitting subsequent declarations.

AML/CFT (1 of 2)

14-Feb-23: EU Council approved an updated list of non-cooperative jurisdictions for tax purposes.

https://data.consilium.europa.eu/doc/document/ST-6375-2023-INIT/en/pdf

Jurisdictions part of the "EU blacklist" (added jurisdiction: blue; removed jurisdiction: ~~strikethrough~~):

American Samoa	Costa Rica	Palau	Trinidad and Tobago
Anguilla	Fiji	Panama	Turks and Caicos Islands
Bahamas	Guam	Russian Federation	US Virgin Islands
British Virgin Islands	Marshall Islands	Samoa	Vanuatu

Jurisdictions part of the "EU grey list" (added jurisdiction: blue; removed jurisdiction: ~~strikethrough~~):

Albania	Botswana	Hong Kong	Montserrat	Türkiye	~~Barbados~~
Armenia	Curaçao	Israel	Qatar	Vietnam	~~Jamaica~~
Aruba	Dominica	Jordan	Seychelles		~~North Macedonia~~
Belize	Eswatini	Malaysia	Thailand		~~Uruguay~~

Background

The EU list of non-cooperative jurisdictions is part of the EU's efforts to promote and strengthen tax good governance mechanisms, fair taxation, and global tax transparency in order to tackle tax fraud, evasion and avoidance. The aim of the so-called "EU blacklist", which is published as an annex (Annex I) to the conclusions adopted by the Ecofin Council, is to encourage positive change in tax legislation and practices through cooperation.

Jurisdictions that do not yet comply with all international tax standards but have committed to implementing reforms are included in a state of play document (Annex II), the so-called "EU grey list".

AML/CFT (2 of 2)

24-Feb-23: FATF updated its public statement concerning i) high-risk jurisdictions subject to a call for action, and ii) jurisdictions under increased monitoring.

https://www.fatf-gafi.org/en/publications/High-risk-and-other-monitored-jurisdictions.html

High-risk jurisdictions subject to a FATF call for action to:

i. apply countermeasures: **Democratic People's Republic of Korea** (unchanged); **Iran** (unchanged).
ii. apply enhanced due diligence measures: **Myanmar** (unchanged).

Jurisdictions under increased monitoring by FATF (added jurisdiction: blue; removed jurisdiction: ~~strikethrough~~):

Albania	Gibraltar	Mozambique	South Africa	Uganda	~~Cambodia~~
Barbados	Haiti	Nigeria	South Sudan	United Arab Emirates	~~Morocco~~
Burkina Faso	Jamaica	Panama	Syria	Yemen	
Cayman Islands	Jordan	Philippines	Tanzania		
Democratic Republic of Congo	Mali	Senegal	Türkiye		

Background

High-risk jurisdictions have significant strategic deficiencies in their regimes to counter money laundering, terrorist financing, and financing of proliferation. For all countries identified as high-risk, the FATF calls on all members and urges all jurisdictions to apply enhanced due diligence and, in the most serious cases, countries are called upon to apply countermeasures to protect the international financial system. This list is often externally referred to as the “FATF black list”.

Jurisdictions under increased monitoring are actively working with the FATF to address strategic deficiencies in their regimes to counter money laundering, terrorist financing, and proliferation financing. When the FATF places a jurisdiction under increased monitoring, it means the country has committed to resolve swiftly the identified strategic deficiencies within agreed timeframes and is subject to increased monitoring. This list is often externally referred to as the “FATF grey list”.

AIFMD and UCITS Directive (1 of 6)

06-Jan-23: ESMA published the fifth revision of its IT Technical Guidance for AIFMD Reporting.

https://www.esma.europa.eu/document/aifmd-reporting-it-technical-guidance-rev-5-updated

On 6 January 2023, ESMA published the fifth revision of its IT Technical Guidance for AIFMD Reporting.

The new IT Technical Guidance introduces new validation rules making more fields mandatory or with stricter rules to improve data quality. The new changes are specified in the tab 'change history' of the excel document included in the full set of documents available at:

https://www.esma.europa.eu/sites/default/files/library/2013-1358_aifmd_reporting_it_technical_guidance-revision5.zip

Reporting entities should use the '**Revision 5**' version to submit reports required under Articles 3(3)(d) and 24(1), (2) and (4) of AIFMD **from November 2023 onwards**.

The current IT technical guidance '**Revision 4**' is applicable **until November 2023**, when 'Revision 5' becomes applicable. The full set of documents of the IT technical guidance 'Revision 4' is available at:

https://www.esma.europa.eu/sites/default/files/2013-1358_aifmd_reporting_it_technical_guidance-revision4.zip

AIFMD and UCITS Directive (2 of 6)

24-Jan-23: EU Parliament's ECON Committee reached a political agreement on the proposal to amend the AIFMD and the UCITSD. (see next slide)

https://www.europarl.europa.eu/doceo/document/A-9-2023-0020_EN.html

On 24 January 2023, the EU Parliament's ECON Committee voted to approve the revised text of its proposal to amend the AIFMD and the UCITS Directive (UCITSD). The table below highlights some of the key changes that would be introduced by the proposed amendments.

	AIFMD	UCITSD
Ancillary services	The list of ancillary services that AIFMs can provide as per Art. 6(4) would be extended, including benchmark administration and credit servicing.	N/A
Functions	The list of functions in Annex I would be extended, including originating loans and servicing securitisation special purpose entities.	N/A
Loan origination	AIFMs would have to implement effective policies, procedures and processes for granting loans, assessing credit risk and administering and monitoring their credit portfolios. AIFMs would need to ensure that the AIFs they manage retain, on an ongoing basis and until maturity, 5% of the notional value of the loans they have originated and sold off to the secondary market. Where the borrower is a financial undertaking, a collective investment undertaking or a MiFID investment firm, a loan originated by this borrower must not exceed 20% of the AIF's capital. AIFs would be required to adopt a closed-ended structure if the notional value of their originated loans exceeds 60% of the NAV, when the AIFM is not able to demonstrate to its NCA that the AIFs have a sound liquidity risk management system.	N/A
Disclosure to investors	The description of the AIF's liquidity risk management would have to include disclosing the possibility and conditions for using LMTs according to Art. 16. AIFMs would be obliged to provide investors with a list of fees and charges connected to the operation of the AIF and borne by the AIFM or its affiliates. The elements periodically disclosed to investors would have to include the portfolio composition of originated loans, and the fees and charges charged or allocated to the AIF, as well as any parent company, subsidiary, or special purpose entity established by the AIFM in relation to the AIF's investments.	N/A
List of available LMTs	(1) Suspension of redemptions; (2) Redemption gates; (3) Notice periods; (4) Redemption fees; (5) Swing pricing; (6) Anti-dilution levy; (7) Redemptions in kind; (8) Side pockets.	

AIFMD and UCITS Directive (3 of 6)

24-Jan-23: EU Parliament's ECON Committee reached a political agreement on the proposal to amend the AIFMD and the UCITSD. (see previous/next slide)

	AIFMD	UCITSD
Substance requirements	At least two persons residing in the EU would need to be employed full-time or committed full-time to conduct the business of the AIFM.	At least two persons residing in the EU would need to be employed full-time or committed full-time to conduct the business of the management company.
Delegation arrangements	Delegation arrangements would include the extended list of functions in Annex I and the extended list of ancillary services in Art. 6(4). NCAs would have to notify ESMA of any delegations made to third-country entities. ESMA would be empowered to adopt draft RTS to determine the content of such delegation notifications. To prevent the creation of letter-box entities, ESMA would have to report to the Parliament and Council on market practices regarding delegation. The Commission would be empowered to adopt a delegated act to further specify the conditions for delegation and the conditions under which the AIFM is to be deemed a 'letter-box' entity.	Management companies would be allowed to delegate to third parties the functions described in Annex II and the ancillary services set out in Art. 6(3). NCAs would have to notify ESMA of any delegations made to third-country entities. ESMA would be empowered to adopt draft RTS to determine the content of such delegation notifications. To prevent the creation of letter-box entities, ESMA would have to report to the Parliament and Council on market practices regarding delegation. The Commission would be empowered to adopt a delegated act to further specify the conditions for delegation and the conditions under which the management company is to be deemed a 'letter-box' entity.
Depositary obligations	Depositaries would be exempted from the requirement to perform ex-ante due diligence where the custodian is a CSD as defined in Commission Delegated Regulation (EU) 2017/392. The provision of services by a CSD in this context would not be considered a delegation of the depositary's custody functions.	Depositaries would be exempted from the requirement to perform ex-ante due diligence where the custodian is a CSD as defined in Commission Delegated Regulation (EU) 2017/392. The provision of services by a CSD in this context would not be considered a delegation of the depositary's custody functions.
Supervisory cooperation	The competent authority of a host Member State of the AIFM may request the competent authority of the home Member State of the AIFM to exercise its supervisory powers, specifying reasons for its request and notifying ESMA and the ESRB, if there are risks to financial stability.	The competent authority of a host Member State of the UCITS may request the competent authority of the home Member State of the UCITS to exercise its supervisory powers, specifying reasons for its request and notifying ESMA and the ESRB, if there are risks to financial stability.

AIFMD and UCITS Directive (4 of 6)

24-Jan-23: EU Parliament's ECON Committee reached a political agreement on the proposal to amend the AIFMD and the UCITSD. (see previous slide)

	AIFMD	UCITSD
Liquidity management	Member States would have to ensure that at least the LMTs set out in Annex V are available to AIFs. Open-ended AIFs would have to select at least two appropriate LMTs (only one for MMFs) from the list set out in Annex V. AIFMs could temporarily suspend redemptions in exceptional circumstances. An AIFM would have to inform its home member state NCA when LMTs are activated or deactivated. This information has to be shared with the AIFM's host member state, ESMA and the ESRB, if there are potential risks to financial stability. NCAs would be empowered to require that an AIFM (under certain conditions even a non-EU AIFM) activates or deactivates a relevant LMT. Competent authorities would have to notify other relevant authorities, ESMA and ESRB, prior to requiring activation or deactivation of an LMT. ESMA would be empowered to draft RTS to specify the characteristics of the LMTs and when NCAs intervention is warranted.	Member States would have to ensure that at least the LMTs set out in Annex IIA are available to UCITS. Open-ended UCITS would have to select at least one appropriate LMT from the list set out in Annex IIA. UCITS could temporarily suspend redemptions in exceptional circumstances, as well as activate side pockets under certain conditions. The UCITS would have to inform its home member state NCA when LMTs are activated or deactivated. This information has to be shared with the AIFM's host member state, ESMA and the ESRB, if there are potential risks to financial stability. NCAs would be empowered to require that a management company activates or deactivates a relevant LMT. Competent authorities would have to notify other relevant authorities, ESMA and ESRB, prior to requiring activation or deactivation of an LMT. ESMA would be empowered to draft RTS to specify the characteristics of the LMTs and when NCAs intervention is warranted.
Reporting obligations	AIFMs reporting obligations would be expanded, i.e. they would not be limited only to 'principal' markets or 'main' asset categories / instruments. ESMA would be empowered to develop draft RTS and draft ITS specifying the details to be reported, the format and data of the reports and the reporting frequency and timing. ESMA would be mandated to issue a report aimed at streamlining supervisory reporting requirements for AIFMs and to take it as a basis for developing draft RTS for supervisory reporting under Art. 24.	An obligation would be introduced for management companies to report periodically to NCAs on the markets and instruments traded. ESMA would be empowered to develop draft RTS and draft ITS specifying the details to be reported, the format and data of the reports and the reporting frequency and timing. ESMA, in cooperation with the ESAs and the ECB, would be tasked with producing a report for the development of integrated supervisory data collection.

AIFMD and UCITS Directive (5 of 6)

03-Feb-23: ESMA updated its Q&As on the application of the UCITS Directive.

https://www.esma.europa.eu/sites/default/files/library/esma34_43_392_qa_on_application_of_the_ucits_directive.pdf

ESMA updated its Q&As on the application of the UCITS Directive by adding Section I - Question 5e:

Q: Article 52(1)(b) of the UCITS Directive requires a UCITS not to invest more than 20% of its assets in deposits made with the same body. Does the term "body" referred to in the aforementioned article mean "credit institution" as mentioned in Article 50(1)(f) of the UCITS Directive or does it include also any other counterparty which is not a credit institution?

A: The term "body" as referred to in Article 52(1)(b) means "credit institution" as mentioned in Article 50(1)(f) of the UCITS Directive. The guidance provided by this Q&A is only applicable in the context of Article 52(1)(b) and should not affect the meaning of the term "body" in other instances of the UCITS Directive.

AIFMD and UCITS Directive (6 of 6)

10-Mar-23: ESMA updated its Q&As on the application of the AIFMD.

https://www.esma.europa.eu/sites/default/files/library/esma34-32-352_qa_aifmd.pdf

ESMA updated its Q&As on the application of the AIFMD by adding Section XVI - Question 1:

Q: Article 3(2) AIFMD states the following:

"Without prejudice to the application of Article 46, only paragraphs 3 and 4 of this Article shall apply to the following AIFMs:

a) **AIFMs which either directly or indirectly, through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding, manage portfolios of AIFs whose assets under management, including any assets acquired through use of leverage, in total do not exceed a threshold of EUR 100 million; or**

b) **AIFMs which either directly or indirectly, through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding, manage portfolios of AIFs whose assets under management in total do not exceed a threshold of EUR 500 million when the portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during a period of 5 years following the date of initial investment in each AIF".**

How should the notion of "substantive direct or indirect holding" in Article 3(2) of the AIFMD be interpreted. In particular, is there a quantitative threshold above which the criterion of substantive direct or indirect holding could be considered as met, and, if yes, what this threshold would be?

A: As mentioned in Article 3(2)(a) AIFMD, the notion of "substantive direct or indirect holding" refers to situations where the AIFM manages the portfolios of AIFs through its direct or indirect holding in a company. This covers, for instance, situations whereby the AIFM de facto has the power to impose decisions on the AIF portfolio composition, its asset allocation or its risk management.

Article 3(2)(a) AIFMD does not set a quantitative threshold. The notion of "substantive direct or indirect holding" shall be assessed on a case-by-case basis by AIFMs supervisors.

ELTIFs

20-Mar-23: Regulation (EU) 2023/606 (the ELTIF 2 Regulation) amending Regulation (EU) 2015/760 on European long-term investment funds (the ELTIF Regulation) has been published in the EU Official Journal.

https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023R0606

On 15 February 2023, the European Parliament voted in favour of a major update to the ELTIF Regulation, also known as ELTIF 2 Regulation. On 20 March 2023, the ELTIF 2 Regulation has been published in the EU Official Journal. The key changes introduced by the ELTIF 2 Regulation are briefly summarized below:

- **Extended scope of eligible assets**. Investments in UCITS or EU AIFs managed by EU AIFMs and invested in ELTIF-eligible assets are allowed. Investments in STS securitisations, Green Bonds and minority co-investments are permitted as well. Real assets are defined broadly as “any asset that has an intrinsic value due to its substance and properties”, and the minimum investment threshold is removed.
- **Extended scope of qualifying portfolio undertakings**. The maximum market capitalisation of qualifying portfolio undertakings is increased to EUR 1.5 billion.
- **More flexible portfolio composition**. The minimum investment in eligible assets (i.e. long-term illiquid assets) is lowered to 55%.
- **More flexible rules for ‘professional’ ELTIFs**. ELTIFs marketed solely to professional investors can disapply portfolio composition, diversification and concentration limits. Also, the cash borrowing limit is increased to 100% of net assets for ‘professional’ ELTIFs (and to 50% of net assets for ‘retail’ ELTIFs).
- **Possibility of redemptions**. ELTIFs may provide for the possibility of redemptions under specific conditions (including a minimum holding period).
- **Lighter requirements for retail investors**. For retail investors, the minimum investment holding of EUR 10k and the 10% exposure cap for total portfolios below EUR 500k are removed. Furthermore, the distribution regime for retail investors is aligned to the MiFID requirements.

The ELTIF 2 Regulation entered into force on 10 April 2023 (i.e. 20 days after its publication) and will apply from 10 January 2024 (i.e. 9 months after its publication).

Background

Since the adoption of the ELTIF Regulation in 2015, a very limited number of ELTIFs have been launched with net assets totalling only EUR 2.4 billion, due to significant constraints in the distribution process (demand-side) and stringent rules on portfolio composition (supply-side). The ELTIF 2 Regulation aims at addressing the shortcoming of the ELTIF Regulation, making ELTIFs more attractive both for asset managers and investors.

Digital Finance (1 of 6)

16-Jan-23: Regulation (EU) 2022/2554 on digital operational resilience for the financial sector (the Digital Operational Resilience Act or "DORA") entered into force.

http://data.europa.eu/eli/reg/2022/2554/oj

DORA entered into force on 16 January 2023, and the new rules will apply from 17 January 2025. ESAs are currently developing the related technical standards.

Context: In order to achieve a high common level of digital operational resilience, DORA lays down uniform requirements concerning the security of network and information systems supporting the business processes of financial entities.

Scope: DORA applies among others to most credit institutions, payment institutions, electronic money institutions, investment firms, authorized AIFMs, management companies, central securities depositories, central counterparties, trading venues, trade repositories, most insurance and reinsurance undertakings and intermediaries, IORPs, credit rating agencies, administrators of critical benchmarks, and also to information and communication technology (ICT) third-party service providers.

Key requirements:

- **ICT risk management framework**. The management body of the financial entity shall define, approve, oversee and be responsible for the implementation of all arrangements related to the ICT risk management framework. Financial entities are required to use, document in writing, and maintain, the appropriate systems, protocols and tools needed to provide sufficient reliability, capacity and resilience.
- **ICT-related incident management and reporting**. Financial entities must comply with requirements for an ICT-related incident management process which enables monitoring and logging of ICT-related incidents, followed by an obligation to classify them based on specific criteria. When ICT-related incidents are deemed major, they must be reported to the NCAs and, when relevant, to the client, following a harmonised procedure.
- **Digital operational resilience testing**. Financial entities must establish and maintain a sound and comprehensive digital operational resilience testing programme to assess their preparedness for handling ICT-related incidents, identifying weaknesses, deficiencies and gaps in digital operational resilience, and promptly implementing corrective measures.
- **ICT third-party risk management**. The contracts that govern the relationship between ICT service providers and financial entities will need to contain certain specific contractual provisions. An oversight framework for 'critical' ICT third-party providers, to be designated by the ESAs, is introduced as well. Any such providers which are located in third countries and provide critical services, will be required to establish a subsidiary within the EU to be used by financial entities.

Digital Finance (2 of 6)

08-Mar-23: ESMA published its Guidelines on standard forms, formats and templates to apply for permission to operate a DLT market infrastructure.

https://www.esma.europa.eu/sites/default/files/library/ESMA70-460-213_DLTR_GLs_on_application_standard_forms_formats_templates.pdf

On 8 March 2023, ESMA published its Guidelines on standard forms, formats and templates to apply for permission to operate a DLT market infrastructure (the "Guidelines"), in accordance with EU Regulation 2022/858 (the "DLT Pilot Regime"). The Guidelines apply as from 23 March 2023.

The objectives of the Guidelines are to establish consistent, efficient and effective supervisory practices within the European System of Financial Supervision and to ensure the common, uniform and consistent application of Articles 8(4), 9(4) and 10(4) of the DLT Pilot Regime. In particular, they aim at establishing standard forms, formats and templates to apply for specific permissions to operate DLT market infrastructures. The Guidelines are briefly summarized below.

Guidelines for competent authorities. Competent authorities should make available on their websites instructions on how to submit an application for a specific permission to operate a DLT market infrastructure, indicating:

- Whether duly completed application forms, notifications and any related additional information are to be submitted on paper, electronically, or both;
- The languages that can be used to fill-in the template;
- A contact point for handling information received from applicants.

Guidelines for applicants. Applicants should provide the competent authority with the following information:

- Table 1 of the Annex (general information on the applicant);
- Table 2 of the Annex (additional information if applying for a DLT Multilateral Trading Facility, a DLT Settlement System or a DLT Trading and Settlement System);
- Table 3 and/or Table 4 of the Annex (additional information if the applicant is or intends to be authorised as an investment firm or to operate a regulated market, or if the applicant is or intends to be authorised as a CSD under CSDR).

Digital Finance (3 of 6)

09-Mar-23: Luxembourg Parliament approved the bill of law 8055, known as Blockchain III Law.

https://www.chd.lu/fr/dossier/8055

On 9 March 2023, Luxembourg Parliament approved the bill of law 8055, known as **Blockchain III Law**. The new law transposes EU Regulation 2022/858 on a pilot regime for market infrastructures based on distributed ledger technology (the "DLT Pilot Regime"), and completes the first two Blockchain Laws by:

- Amending the Law of 5 April 1993 on the financial sector, as well as the Law of 30 May 2018 on markets in financial instruments, explicitly extending the notion of financial instruments to those instruments issued under the DLT Pilot Regime.
- Amending the Law of 5 August 2005 on financial collateral arrangements, introducing the possibility to take collateral over financial instruments registered on securities accounts using secured electronic registration systems (such as DLTs).

Background

The Law of 1 March 2019 (**Blockchain I Law**) amended the Law of 1 August 2001 on the circulation of securities, by allowing the use of secured electronic registration systems (such as DLTs) for the issuance and circulation of securities.

The Law of 22 January 2021 (**Blockchain II Law**) amended the Law of 6 April 2013 on dematerialised securities, by expressly recognising the possibility of using secured electronic registration systems (such as DLTs) to issue dematerialised securities, and the Law of 5 April 1993 on the financial sector, by allowing MiFID investment firms and credit institutions based in Luxembourg or in another Member State to exercise the activity of 'central account keeper' in relation to unlisted debt securities.

Digital Finance (4 of 6)

23-Mar-23: Regulation (EU) 2022/858 on a pilot regime for market infrastructures based on distributed ledger technology (the "DLT Pilot Regime") became applicable.

http://data.europa.eu/eli/reg/2022/858/oj

On 23 March 2023, Regulation (EU) 2022/858 (the "DLT Pilot Regime" or "Regime") became applicable. The Regime aims to integrate DLT into European financial services legislation, whilst maintaining investor protection, financial stability and transparency. It was proposed to tackle the legal uncertainties and difficulties relating to the issuance, trading and settlement of 'DLT financial instruments', i.e. financial instruments issued, recorded, transferred and stored using DLT.

Definitions:

- 'Distributed ledger' means an information repository that keeps records of transactions and that is shared across, and synchronised between, a set of DLT network nodes using a consensus mechanism.
- 'DLT network node' means a device or process that is part of a network and holds a complete or partial replica of records of all transactions on a distributed ledger.
- 'Consensus mechanism' means the rules and procedures by which an agreement is reached, among DLT network nodes, that a transaction is validated.

Key changes:

- A specific reference has been added to MiFID to include in the definition of financial instruments those issued by means of DLT.
- The Regime sets out a temporary and optional regime for CSDs to facilitate the issuance, trading and settlement of financial instruments on DLT.
- The Regime provides for temporary exemptions for up to 6 years from provisions in MiFID, MiFIR and CSDR that are typically applicable to "traditional" market operators and could preclude or limit the use of DLT.
- The Regime introduces two changes related to financial market infrastructures: the admission of natural persons under certain conditions, and the creation of the status of DLT trading and securities settlement system, whereby a CSDs or multilateral trading facility will be authorised to provide trading and settlement services.

Digital Finance (5 of 6)

03-Feb-23 and 27-Mar-23: ESMA updated its Q&As on the DLT Pilot Regime. (see next slide)

https://www.esma.europa.eu/sites/default/files/library/esma70-460-189_qas_dlt_pilot_regulation.pdf

ESMA updated its Q&As on the DLT Pilot Regime by modifying or adding the following Q&As:

Q: According to Article 26(5) of MiFIR, TVs shall report on behalf of firms that are not subject to the transaction reporting regime. In a DLT MTF or TSS operating under the DLT Pilot regime, the DLT MTF or DLT TSS may admit natural persons as members executing transactions. How should DLT MTFs or DLT TSS report on behalf of natural persons that are not subject to Article 26 of MiFIR?

A: In case the reporting exemption is granted by the NCA to the DLT MTF/TSS in the context of the DLTR, NCAs can request the DLT MTF/TSS to provide the access to all relevant data concerning natural persons executing transactions. In the case no reporting exemption is granted, DLT MTF/TSS are not legally required to report the National ID of the natural person executing the transaction as part of the RTS 22 template.

Q: How should Field 5 of RTS 23 "Issuer or operator of the trading venue identifier" be populated for DLT financial instruments that are the digital representation of a previously issued financial instrument?

A: Where the full set of characteristics of the DLT financial instrument remain the same as the traditional financial instrument, with the only difference being the technology used for the respective issuances, the issuer of the DLT instrument should be the same as that of the pre-existing financial instrument that is represented by the DLT one. Its LEI should thus be reported in Field 5 of RTS 23.

Q: How should Field 5 of RTS 23 "Issuer or operator of the trading venue identifier" be populated for DLT financial instruments within Article 3(1)(a) and (b) DLTR that are exclusively created on the DLT and do not represent a previously issued financial instrument?

A: As for the case of non-DLT shares, bonds and other forms of securitised debt, including depositary receipts, Field 5 should be populated with the LEI of the legal entity which issues or proposes to issue the financial instrument within the meaning of the Prospectus Regulation and, in case of depositary receipts, the entity which issues the debt instrument represented in line with MAR Article 3(1)(21).

Digital Finance (6 of 6)

03-Feb-23 and 27-Mar-23: ESMA updated its Q&As on the DLT Pilot Regime. (see previous slide)

Q: Which identification code should be provided by trading venues, investment firms and approved publication arrangements (APA) in the reporting fields for the purpose of the post-trade transparency obligations under RTS 1 and RTS 2 in the context of DLT instruments?

A: For the purpose of post-trade transparency reports, in order to identify equity or equity-like instruments (including DLT instruments), as per Table 3 of Annex I of RTS 1, and non-equity instruments (including DLT instruments) as per Table 2 of Annex II of RTS 2, trading venues, investment firms and APAs are required to populate the “instrument identification code field” with the ISIN code. Nevertheless, in order to provide for more granular instrument information on DLT instruments, ESMA recommends that trading venues, investment firms and APAs complement the identification code provided by including the Digital Token Identifier (DTI) when publishing post-trade information. The DTI would be reported as an optional additional field.

Q: How should the tentative market capitalisation of DLT shares (referred to in Article 3(1)(a) of DLTR) be calculated?

A: For DLT shares that are not yet admitted to trading or traded on a trading venue, the tentative market capitalisation could be calculated as the multiplication of:

1) the final offer price or the maximum price (where the final offer price and/or amount of shares to be offered to the public, whether expressed in number of shares or as an aggregate nominal amount, cannot be disclosed);

2) the total number of shares outstanding immediately after the share offer to the public, calculated either on the basis of the amount of shares offered to the public or on the basis of the maximum amount of shares offered to the public (where the final offer price and/or amount of shares to be offered to the public, whether expressed in number of shares or as an aggregate nominal amount, cannot be disclosed).

BMR

31-Mar-23: ESMA updated its Q&As on the Benchmark Regulation.

https://www.esma.europa.eu/sites/default/files/library/esma70-145-114_qas_on_bmr.pdf

ESMA updated its Q&As on the Benchmark Regulation by modifying the following Q&As:

Q7.5: What information may ESMA rely on in an external audit report of compliance to IOSCO Principles under Article 32(2) of BMR?

A7.5: Article 32(2) of BMR states that in order to assess compliance with the IOSCO principles for financial benchmarks or the IOSCO principles for Oil Price Reporting Agencies (PRAs), as applicable, ESMA may rely on an assessment by an independent external auditor.

ESMA considers that the BMR does not require ESMA to rely on this assessment by an independent external auditor, rather ESMA may use the assessment as a piece of evidence. […]

Q7.7: What should be the role and responsibilities of a legal representative under Article 32(3) of BMR and what entities may be suitable candidates to perform such role?

A7.7: Pursuant to Article 32(3) of the BMR, the legal representative should shall be a natural or legal person located in the Union. […]

According to Article 5(3)(i) of the BMR, the oversight function must report to the relevant competent authorities any misconduct by administrators, of which the oversight function becomes aware. The legal representative should hence be able to inform ESMA in the event that it finds that the third country administrator does not comply with the relevant legal requirements. […]

ESMA acknowledges that the BMR does not include any specific requirement regarding the types of entities that may act as a legal representative when a legal person is appointed to perform this role. However, the above listed functions and responsibilities are the key elements the administrator should consider in the selection and appointment of its legal representative in the Union.

For the legal representative to effectively perform its functions and responsibilities, and notably to perform the oversight function together with the administrator, a suitable candidate to be considered would be an entity that is part of the administrator's group and, where available, that is either a benchmark administrator or another supervised entity located in the Union.

CSDR

13-Mar-23: ESMA updated its Q&As on the Central Securities Depositories Regulation.

https://www.esma.europa.eu/sites/default/files/library/esma70-708036281-2_csdr_qas.pdf

ESMA updated its Q&As on the implementation of Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation or CSDR) by adding this question 8c within the Settlement Discipline section:

Q: Should a CSD set up its partial settlement functionality as a proper functionality or could it be an outcome-based feature?

A: Article 10 of Commission Delegated Regulation (EU) 2018/1229 (regulatory technical standards on settlement discipline) requires that a CSD allow for the partial settlement of settlement instructions. Furthermore, Article 23 of the RTS on settlement discipline states that where on the last business day of the extension period some of the relevant financial instruments are available for delivery to the receiving participant, the receiving and failing clearing members, trading venue members or trading parties, as applicable, shall partially settle the initial settlement instruction, unless the instruction is put on hold. However, neither the CSDR Regulation nor the RTS on settlement discipline provide a detailed explanation or set instructions as to how to proceed with a partial settlement, implying a certain degree of flexibility in how CSDs are to achieve this outcome.

Therefore, CSDs are free to determine how the partial settlement functionality and its related features are implemented in practice. CSDs should nevertheless actively undertake all necessary steps to make partial settlement available, rather than solely rely on the participants' initiative.

Miscellaneous (1 of 4)

17-Feb-23: ESAs updated their Joint Committee Q&As on the Securitisation Regulation. (see next slide)

https://www.esma.europa.eu/sites/default/files/library/jc_2021_19_jcsc_qas_on_securitisation_regulation.pdf

ESAs updated their Joint Committee Q&As on Regulation (EU) 2017/2402 (the Securitisation Regulation or SECR) by adding 11 new questions summarized below:

Q: In the case of private STS non-ABCP securitisations, is it also required to include all the items mentioned under subparagraphs (a) to (d) of Article 21(6) SECR in the transaction documentation?
A: Yes. All information mentioned under subparagraphs (a) to (d) shall always be provided irrespective of whether the STS non-ABCP securitisation is public or private.

Q: In a transaction where there is one class of external investors (e.g., senior loan noteholders) and where there is the retention holder that holds a claim for repayment of a subordinated loan (e.g., the originator), should this be considered as two different classes of investors?
A: Yes. In a transaction where there is one class of external investors (e.g., senior loan noteholders, bank X and bank Y) and where there is the retention holder that holds a subordinated loan (e.g., the originator), these should be considered as two different classes of investors and therefore the specific items in the guidelines should all be included in the transaction documentation.

Q: Is it allowed to include a step-up margin in an STS securitisation, whereby the interest rate paid to investors will increase in case the STS label is no longer applicable?
A: The SECR does not preclude an STS securitisation from including a step-up margin whereby the interest rate paid to investors will increase in case the STS label is no longer applicable.

Q: Can mortgages that are secured by non-owner occupied residential real estate (RRE) and mortgages that are secured by mixed-use real estate properties considered to be both residential mortgages and thus can a combination of these two types considered to be homogeneous in accordance with Article 1(a)(i) of Commission Delegated Regulation (EU) 2019/1851 (the 'RTS on homogeneity')?
A: No. The RTS on homogeneity prevents the possibility for a securitisation transaction featuring underlying exposures which inherently contain a different risk-profile, as in the case of mixed-use real estate properties, to be considered 'homogenous'.

Miscellaneous (2 of 4)

17-Feb-23: ESAs updated their Joint Committee Q&As on the Securitisation Regulation. (see previous/next slide)

Q: Could alternatively buy-to-let mortgages, in this case consisting of both mortgages that are secured by non-owner occupied residential and mortgages that are secured by mixed-use real estate properties, be considered as an asset type within the meaning of Article 1(a)(viii) of the RTS on homogeneity?
A: No. Buy-to-let mortgages consisting of both mortgages secured by non-owner occupied residential and mortgages secured by mixed-use real estate properties cannot be considered as “other underlying exposures that are considered by the originator or sponsor to constitute a distinct asset type […]” within the meaning of Article 1(a)(viii) of the RTS on homogeneity.

Q: Considering the homogeneity factor in a transaction is "jurisdiction", is it allowed under Article 2(4)(b) on the RTS on homogeneity to view obligors that are branches of a legal entity in a Rome I Country (e.g., a Dutch branch of an Italian entity) as an obligor with residence in the same jurisdiction as, for example, a legal entity in that jurisdiction (e.g., a Dutch private limited company (besloten vennootschap))?
A: No. Article 2(4)(b) of the RTS on homogeneity refers to obligors with residence in the same jurisdiction.

Q: According to Article 21(7)(c) of SECR, the transaction documentation shall clearly specify provisions that ensure the replacement of, amongst others, liquidity providers in the case of their default, insolvency, and other specified events, where applicable. In the case of a securitisation where there is a Reserves Funding Provider or Subordinated Loan Provider that fulfils a role as a liquidity provider, are those provisions still needed?
A: Yes. The transaction documents shall always include a provision that ensures the replacement of a party that (partially) fulfils the role as a liquidity provider in case of their default, insolvency or other specified events, where applicable.

Q: Which reporting templates should apply to a securitisation backed by project finance loan receivables?
A: The “esoteric template” set out in Annex IX of Commission Delegated Regulation (EU) 2020/1224 (the Disclosure RTS) should be used in this case.

Q: What annexes need to be used to report a mortgage securities portfolio backed by collateral of several types (commercial, residential, industrial ...), would the Property Type (RREC9 and CREC12) be a proper delimiter?
A: As stipulated under Article 2(2) of the Disclosure RTS , “where a non-ABCP securitisation includes more than one of the types of collateral listed in paragraph 1, the reporting entity for that securitisation shall make available the information specified in the applicable Annex for each collateral type”. Therefore, in the case of a mixed portfolio, a transaction is to be reported according to the various applicable templates listed in Article 2(1) of the Disclosure RTS using the applicable property type set out in Annexes II or III.

Miscellaneous (3 of 4)

17-Feb-23: ESAs updated their Joint Committee Q&As on the Securitisation Regulation. (see previous slide)

Q: Could an exposure be reported in several annexes based on the Property Type? If an exposure has as collateral a Residential House, a Pub and a personal guarantee, should the exposure be reported in Annexes 2, 3 and 9?
A: Yes. Similarly, an exposure should be reported using the relevant property type related Annexe(s) (in the example in the Q, these would be Annexes II, III and IX of the disclosure RTS).

Q: Are securitisation transactions covered by the EMIR regulation?
A: EMIR applies to financial and, where so provided, to non-financial counterparties and as such includes SSPEs. EMIR applies to these counterparties with respect to their derivative transactions. This includes OTC derivative transactions associated to securitisations.
Article 42 of the SECR has amended EMIR with the aim to ensure a level playing field between the regime for covered bonds and the one for securitisations with respect to the clearing obligations and the risk mitigation techniques for non-centrally cleared OTC derivatives. Notably, this has led the ESAs to develop the draft RTSs specifying the criteria for establishing which arrangements adequately mitigate counterparty credit risk associated with securitisations (Commission Delegated Regulation (EU) 2020/447) and bilateral margining (Commission Delegated Regulation (EU) 2020/448).

Q: Are investors subject to any reporting obligations under the SECR?
A: An institutional investor, other than the originator, sponsor or original lender, holding a securitisation position, is not subject to any reporting obligations under SECR. However, such an investor shall comply with the due-diligence requirements set out in Article 5 of SECR as applicable prior to and whilst holding a securitisation position.

Q: Is the usage of estimated Energy Performance Certificate values allowed if exact information is not available from any publicly accessible sources? Specifically, and in particular for the building stock across countries.
A: No. The only Energy Performance Certificate value of the collateral that is allowed under the applicable reporting templates set out in the disclosure RTS (e.g., Annex 2 - RREC 10) is the actual value at the time of origination. Therefore, estimated data are not allowed.

Miscellaneous (4 of 4)

24-Mar-23: A bill of law proposing amendments to the Luxembourg fund rules was deposited with the Luxembourg Parliament.

https://wdocs-pub.chd.lu/docs/exped/0138/052/276521.pdf

On 24 March 2023, a bill of law proposing amendments to the Luxembourg fund rules was deposited with the Luxembourg Parliament. The key proposed modifications, which aim to improve and harmonise rules introduced over time into the different funds product laws, are briefly summarized below.

Key Amendment	UCI Law Part II	SIF Law	SICAR Law	RAIF Law	AIFM Law
Harmonisation of the "well-informed investor" definition by cross-referring to "professional investors" as defined under MiFID, and by lowering the investment threshold to EUR 100k.		✓	✓	✓	
Increase of the time limit by which the subscribed capital must reach the legal minimum.	12 months	24 months	24 months	24 months	
Depositary agreements to provide for a notice period allowing the depositary to be replaced.	✓*	✓	✓		
Simplification of the application of the exemption or the reduced subscription tax.	✓	✓		✓	
Harmonisation of the available legal forms for Part II SICAVs with those available under the SIF, SICAR and RAIF Laws (SA, SCA, SCS, SCSp, SARL, SCoSA).	✓				
Harmonisation of the conditions for delegation by a SICAR with those in the SIF Law.			✓		
Introduction of rules for voluntary and judicial liquidation of the AIFM.					✓
Authorised AIFMs may have recourse to "tied agents" within the meaning of the Law of 5 April 1993 on the financial sector, as amended, as in the case of Management Companies.					✓

* This change also concerns UCITS (i.e. UCI Law Part I).

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