



MIZUHO

Regulatory News

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Japan Fund Management (Luxembourg) S.A.

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Ukraine Crisis

14-Sep-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) 2023/1765 of 13 September 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/2023/1765/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 3)

30-Jun-23: CSSF issued a communication to provide industry participants with information regarding the launch of the data collection exercise relating to the disclosures in periodic reports for financial products disclosing under Article 8 or Article 9 SFDR.

<https://www.cssf.lu/en/2023/06/sfdr-data-collection-exercise-applicable-to-investment-fund-managers-ifms-and-institutions-for-occupational-retirement-provision-iorps-on-periodic-disclosures-in-relation-to-regulation-eu-2019-2/>

Scope: IFMs and IORPs qualifying as FMPs are required to include sustainability-related information in the periodic reports of financial products disclosing under Article 8 or Article 9 of SFDR.

Reporting frequency: The objective of the current data collection exercise is to collect in a digital format on an annual basis, in accordance with the financial year-end of the financial products, information in relation to the disclosures in periodic reports.

Submission to the CSSF of the periodic report included in the annual reports

- For periodic reports issued, in accordance with the legal deadline to publish the annual report or to make it available to investors, between 1 January 2023 and 31 December 2023, information shall be provided to the CSSF by **31 January 2024** at the latest.
- For periodic reports issued as from 1 January 2024, information shall be provided to the CSSF, at the latest, **one month after the legal deadline** to publish the annual report or to make it available to investors.

Submission to the CSSF of the data collection exercise in digital format

Accordingly, the aforementioned information shall be submitted to the CSSF, at the latest, **5 months after financial year-end for UCITS**, respectively **7 months after financial year-end for AIFs and IORPs**.

Transmission channels: SFDR data can be submitted either through a structured file by using the S3 protocol, or through an online solution via eDesk (available as from 30 November 2023) for manual input by IFMs/IORPs for each fund/sub-fund they manage. A dedicated user guide providing clarifications on the content and the format of the data to be reported as well as technical details on the data collection process is available here:

<https://www.cssf.lu/en/Document/sfdr-uci-periodic-data-collection-practical-and-technical-guidance/>

Data collection exercise extension: The current data collection exercise will be extended in the future to collect information contained in the PAI statements.

Sustainable Finance (2 of 3)

3-Aug-23: CSSF published a report of its thematic review on the implementation of sustainability-related provisions in the investment fund industry.

<https://www.cssf.lu/wp-content/uploads/The-implementation-of-sustainability-related-provisions-in-the-investment-fund-industry.pdf>

The objective of this report is to inform the industry about the main observations that the CSSF has made in the context of their supervisory work and about the related recommendations for improvements in view of the applicable regulatory requirements (SFDR, TR, SFDR RTS, UCITS and AIFMD).

- **Integration of sustainability risks by IFMs and organisational arrangements:** the CSSF expects the due diligence performed on the delegated PM by IFMs to duly consider the sustainability-related provisions for funds disclosing under Article 8 or 9 of SFDR. A sustainability risk management process notably involves, amongst others, reflecting the relevant sustainability risks, with the corresponding sustainability risk indicators in the fund's risk profile, the risk limitation system, stress testing scenarios and the corresponding reporting to the senior management and the board of directors.
- **Compliance of precontractual, website and periodic disclosures:** IFMs shall provide information required by SFDR in a manner that is easily accessible, non-discriminatory, prominent, simple, concise, comprehensible, fair, clear and not misleading for investors. This basic principle applies to all the sustainability-related disclosures such as fund names, fund asset allocation, PAI consideration, etc. IFMs shall ensure consistency between (a) environmental/social characteristics or sustainable objectives, (b) indicators to measure the level of attainment of such characteristics or sustainable objectives and (c) the binding elements of the investment strategy, complemented with appropriate ESG metrics and data sources available.
The SFDR RTS require that a prominent statement be included in the main body of the annual report setting out that information on the environmental/social characteristics and/or sustainable investment objectives is made available in the annex to the annual report. IFMs should also provide in that context information on the sustainability indicators used and a quantitative assessment of these indicators realised during the period. The CSSF expects IFMs to provide, for each fund concerned, information on the concrete actions and/or engagements of the IFM in relation to the investments held during the period, thereby considering the related provisions laid down in the precontractual disclosures.
- **Fund documentation and marketing communications:** the information presented in the marketing communications should be consistent with the legal and regulatory documents of promoted funds, a good practice is for IFMs either to indicate in the marketing communications one hyperlink which points to all the sustainability-related information of the fund or to direct to the fund's webpage.
- **Portfolio analysis:** IFMs shall ensure that the portfolio holdings comply at all times with the exclusion criteria contained in the pre contractual disclosures and that the design of such policies is consistent with the environmental and/or social characteristics or sustainable investment objective pursued by the funds.

Sustainable Finance (3 of 3)

14-Sept-23: European Commission launched a consultation on the implementation of the SFDR.

https://finance.ec.europa.eu/system/files/2023-09/2023-sfdr-implementation-targeted-consultation-document_en.pdf

The consultation questionnaire is open until 15 December 2023 and focuses on the implementation of SFDR through four main themes:

- **Current requirements of the SFDR:** Ability of the SFDR disclosure framework to increase transparency with regards to the integration of sustainability risks, consideration of adverse sustainability impacts and contribution to channel capital towards investments considered sustainable. The EC includes questions related to what extent SFDR was not used as a disclosure framework but as a labelling and marketing tool and the extent to which data gaps represents a challenge for market participants to disclose fully in line with the legal requirements under SFDR. The questionnaire will also attempt to estimate the costs of SFDR implementation and human resources, as well as gathering figures on the historical share of financial products making sustainability claims over the past years, prior and after SFDR entered into force.
- **Interaction with other sustainable finance legislation:** The European Commission wants to assess respondents' views about the current interactions, as well as potential inconsistencies or misalignments that might exist between the SFDR and other sustainable finance legislation. The EC includes questions related to the treatment of taxonomy-aligned investment in the SFDR product level disclosures, whether the approach to DNSH and good governance in the SFDR is consistent with the environmental, social and governance exclusions under the PAB/CTB, gauging the respondent's view regarding the room to streamline the entity level disclosure requirements of the SFDR and CSRD.
- **Potential changes to disclosure requirements for financial market participants:** The EC included questions related to the usefulness of entity level disclosures (Art. 3, 4 and 5 SFDR) and the role SFDR has to play at this level. The EC states that the SFDR was designed as a disclosure regime, but is being used as a labelling scheme, suggesting that there might be a demand for establishing sustainability product categories. The questions related to this topic seek to know respondents' views on whether and how these transparency requirements should link to different potential categories of products.
- **Potential establishment of a categorization system for financial products:** There are persistent concerns that the current market use of the SFDR as a labelling scheme might lead to risks of greenwashing, as existing concepts and definitions in the regulation were not conceived for that purpose. Some questions relate to different possibilities as to how the system could be set-up, including whether disclosure requirements about products making sustainability claims should play a role. The EC presents two broad strategies in designing a more precise categorization system; it could either build on and develop the distinction between Art. 8 and 9 SFDR, or it could be based on the type of investment strategy based on new criteria.

AIFs and UCITS (1 of 3)

20-Jul-23: EU Council reached a provisional agreement with the EU Parliament on the proposal to amend the AIFMD and the UCITSD. (see next slide)

On 20 July 2023, the EU Council and the EU Parliament announced their provisional agreement on the proposal to amend the AIFMD ("AIFMD 2"), which also modify the UCITSD by harmonizing requirements in the two directives. The final legal text has not yet been published. Member States will then have 24 months to transpose the revised directive into national law and finalise detailed technical rules implementing the legislation. The table below highlights some of the key changes.

	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.	

AIFs and UCITS (2 of 3)

20-Jul-23: EU Council reached a provisional agreement with the EU Parliament on the proposal to amend the AIFMD and the UCITSD. (continued)

	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	<p>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.</p> <p>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.</p>	<p>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.</p> <p>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.</p>
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.

AIFs and UCITS (3 of 3)

20-Jul-23: EU Council reached a provisional agreement with the EU Parliament on the proposal to amend the AIFMD and the UCITSD. (continued)

	AIFMD	UCITSD
Liquidity management	<p>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.</p> <p>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.</p> <p>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.</p>	<p>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.</p> <p>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.</p>
Reporting obligations	<p>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.</p> <p>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.</p>	<p>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.</p> <p>ESMA, in cooperation with the ESAs and the ECB, would be tasked with producing a report for the development of integrated supervisory data collection.</p>

Miscellaneous

28-Jul-23: The act of 21 July 2023, modernising the Luxembourg investment fund toolbox, entered into force.

<https://legilux.public.lu/eli/etat/leg/loi/2023/07/21/a442/jo>

On 11 July 2023, the Luxembourg Parliament adopted the bill of law n. 8183 which amends the UCI Law, the SIF Law, the SICAR Law, the RAIF Law and the AIFM Law. The act of 21 July 2023 was published in the Luxembourg Mémorial on 24 July 2023 and entered into force on 28 July 2023. The key modifications introduced, which aim to improve and harmonise Luxembourg fund rules, 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.			✓		
Notarial acknowledgement no longer required for RAIFs established by public deed.				✓	
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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