

LUXEMBOURG FINANCIAL SERVICES REGULATOR CSSF ISSUES COMMUNICATION RELATING TO THE LAUNCH OF SFDR DATA COLLECTION EXERCISE APPLICABLE TO AIFMS AND IORPS ACTIVE IN LUXEMBOURG

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Asset Management and Investment Funds Alert

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EXECUTIVE SUMMARY

On 27 July 2022, Luxembourg's financial sector regulator (the CSSF) announced its intention to launch a data collection exercise in respect to the disclosures made in the precontractual documents of financial products (the SFDR Data Collection) related to Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (SFDR) and Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment.

Recently, on 24 March 2023, the CSSF issued a communication to notify all fund managers and institutions for occupational retirement provisions (IORPs) falling within the ambit of the SFDR definition of "Financial Market Participants" (the FM FMPs) of the initiation of the SFDR Data Collection and, most importantly, to provide them with guidance as to the way such data is to be collected.

SCOPE OF THE SFDR DATA COLLECTION

Broadly speaking, all FM FMPs active in Luxembourg fall within the scope of the SFDR Data Collection.

In more detail, the SFDR Data Collection is

Obligatory For:

- Undertakings for the collective investment in transferable securities (UCITS) management companies based in Luxembourg or in another Member State of the European Union in relation to all Luxembourg-domiciled UCITS they manage.
- Authorized alternative investment fund managers (AIFMs) based in Luxembourg in relation to all Luxembourg-domiciled regulated and unregulated alternative investment funds (AIFs) (including European long-term investment funds (ELTIFs)) they manage.

- Authorized AIFMs based in another Member State of the European Union in relation to all Luxembourg-domiciled regulated AIFs as well as Luxembourg-domiciled unregulated AIFs qualifying as ELTIFs they manage.
- Registered subthreshold AIFMs¹ established in Luxembourg or in another Member State of the European Union in relation to all Luxembourg-domiciled regulated AIFs they manage.
- IORPs that are subject to the Luxembourg law of 13 July 2005 on the activities and supervision of IORPs, as amended.

Optional For:

- Entities in respect to which the 2013 Law does not apply, in particular certain supranational institutions;² central banks and national, regional, and local governments;³ or AIFMs explicitly exempted⁴ from the application of the 2013 Law.

The SFDR Data Collection is to be completed and submitted to the CSSF for each fund/sub-fund, regardless of the regime applicable to that fund/sub-fund under SFDR. Consequently, all financial products, ranging from those applying the “bare minimum” of SFDR (Article 6 SFDR) to so-called “light green” (Article 8 SFDR) and so-called “dark green” (Article 9 SFDR) products, are subject to the SFDR Data Collection.

CONTENT OF THE SFDR DATA COLLECTION

For the purpose of providing comprehensive guidance and clear instructions to the FM FMPs, the CSSF has published a user guide⁵ with clarifications on the content and the format of the data to be reported as well as technical details on the SFDR Data Collection.

The requirements for the quantity and quality of the data to be reported can be summarized as follows:

- The SFDR Data Collection contains mostly questions that can be answered with “yes” or “no.”
- For Article 6 SFDR products (that is, those not disclosing under Article 8 SFDR or Article 9 SFDR), the CSSF requires FM FMPs to reply to the following four questions:
 1. Are sustainability risks integrated into the investment decisions for this financial product (Article 6 SFDR)?
 2. Is the information in accordance with Article 6 SFDR disclosed?
 3. Are principal adverse impacts on sustainability factors considered for this financial product (Article 7 SFDR)?
 4. Is the information in accordance with Article 7 SFDR disclosed?
- For Article 8 SFDR and Article 9 SFDR products, FM FMPs are required to submit data in two parts:
 5. The Part 1 questions are (almost) identical to those contained in the annexes to the regulatory technical standards with respect to SFDR (RTS Annexes), as applicable.
 6. The Part 2 questions relate to, among others:
 - The disclosures on the relevant websites.

- The compliance with the format and the content of the RTS Annexes, as applicable.
- The compliance with disclosures under Article 6 SFDR.
- The investment phase of the relevant financial product.
- The latest update of precontractual documents and their availability to investors.

DEADLINE

The deadline for the submission of the initial SFDR Data Collection is 15 June 2023.

After the initial submission, FM FMPs remain responsible to ensure that the information provided is being kept up to date. In case of changes to the precontractual documents (including the annexes relevant to Article 8 SFDR and Article 9 SFDR), FM FMPs must update the data reported under the SFDR Data Collection by transmitting subsequent submissions.

SUBMISSION PROCESS

The SFDR Data Collection concerning undertakings for collective investment (UCIs) must be submitted by the investment fund manager (IFM) (or the UCITS/alternate investment fund for internally managed UCIs). The SFDR Data Collection concerning IORPs must be submitted directly by the IORP. Any questions should be addressed to ucisfdr@cssf.lu.

The SFDR Data Collection can be submitted to the CSSF via the following channels:

- The submission of a structured file through an S3 (simple storage service) protocol, which is already available. This solution allows for an automation by FM FMPs and, if needed, a testing of the reporting file submission before going into production.
- An online submission via eDesk for manual input by IFMs/IORPs. This solution will be made available as of 2 May 2023.

UPCOMING OBLIGATIONS

The current SFDR Data Collection will be extended in the near future to collect information contained in the principle adverse impact statements and in the periodic disclosure templates. Further details on timing and practical proceeding of this extended data collection will be communicated at a later stage.

FOOTNOTES

¹ As defined in Article 3(2) and (3) of the Luxembourg law of 12 July 2013 on alternative investment fund managers, as amended (the 2013 Law).

² Article 2(2)(c) of the 2013 Law: “supranational institutions, such as the European Central Bank, the European Investment Bank, the European Investment Fund, the European Financial Stability Facility S.A., the European Stability Mechanism, the European Development Finance Institutions and bilateral development banks, the International Monetary Fund and other supranational institutions and other similar international organisations, in

the event that such institutions or organisations manage AIFs and in so far as those AIFs act in the public interest[.]”

³ Article 2(2)(d) of the 2013 Law: “national, regional and local governments and bodies or other organisations or institutions which manage funds supporting social security and pension systems[.]”

⁴ As defined in Article 3(1) of the 2013 Law.

⁵ Available at https://www.cssf.lu/wp-content/uploads/User_Guide_-_SFDR_UCI_Data_Collection_-_practical_guide.pdf.

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