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Sustainable finance: EU Commission adopts clarifications regarding SFDR

The EU Commission has published [responses](#) to questions raised by the European Supervisory Authorities (ESAs) on the Sustainable Finance Disclosure Regulation (SFDR).

The aim of the Q&As is to help financial market participants apply the SFDR, especially in the context of the requirements of the regulatory technical standards in place since January 2023. The Q&As are also intended to

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contribute to clarifying the interaction between the SFDR and the different pieces of the sustainable finance framework.

ESAs consult on review of SFDR Delegated Regulation

The ESAs have published a [consultation paper](#) with amendments to the Delegated Regulation of the SFDR. The ESAs are proposing changes to the disclosure framework to address issues that have emerged since the introduction of the SFDR. The ESAs are seeking feedback on amendments that envisage:

- extending the list of universal social indicators for the disclosure of the principal adverse impacts of investment decisions on the environment and society;
- refining the content of other indicators for adverse impacts and their respective definitions, applicable methodologies, formulae for calculation as well as the presentation of the share of information derived directly from investee companies, sovereigns, supranationals or real estate assets; and
- adding product disclosures regarding decarbonisation targets, including intermediate targets, the level of ambition and how the target will be achieved.
- The ESAs also propose further technical revisions to the SFDR Delegated Regulation by:
 - improving the disclosures on how sustainable investments ‘do not significantly harm’ the environment and society;
 - simplifying pre-contractual and periodic disclosure templates for financial products; and
 - making other technical adjustments concerning, among others, the treatment of derivatives, the definition of equivalent information, and provisions for financial products with underlying investment options.

The consultation closes on 4 July 2023. The ESAs will deliver the final report by the end of October 2023.

EU Parliament Committees publish report on proposed Anti-Money Laundering Authority regulation

The EU Parliament’s Committee on Economic and Monetary Affairs (ECON) and Committee on Civil Liberties, Justice and Home Affairs (LIBE) have published their [report](#) dated 5 April 2023 on the proposal for a regulation establishing a new Anti-Money Laundering Authority (AMLA), which forms part of the Commission’s July 2021 AML/CTF legislative package.

The report, adopted by the Committees on 28 March 2023, sets out amendments to the proposed text, as well as a minority position and opinions from the Committee of Budgets, the Committee on Budgetary Control and the Committee on Constitutional Affairs.

The EU Council agreed its partial negotiating position on the proposal on 29 June 2022 and the co-legislators will enter trilogue negotiations in order to agree on a final version of text.

EU Parliament Committee publishes report on proposed directive on distance financial services contracts

The EU Parliament's Committee on the Internal Market and Consumer Protection (IMCO) has published its [report](#) on the Commission's proposal for a directive to repeal the Distance Marketing Directive (2002/65/EC) and to transfer the framework for consumer protections relating to financial services distance contracts to the Consumer Rights Directive (2011/83/EU).

The report, adopted by IMCO on 28 March 2023, sets out amendments to the proposed text, as well as an explanatory statement noting, among other things:

- support for the Commission's overall approach; and
- IMCO's position on provisions relating to pre-contractual information, the right of withdrawal and online requirements.

The EU Council agreed its negotiating position on the proposal on 2 March 2023 and the co-legislators will now enter trilogue negotiations in order to agree on a final version of text.

FSB Chair writes to G20 finance ministers and central bank governors on recent banking sector turmoil

The Chair of the Financial Stability Board (FSB), Klaas Knot, has written to the G20 finance ministers and central bank governors ahead of their meeting on 12-13 April. The [letter](#) discusses the consequences of recent turmoil in the banking sector on the financial stability outlook and introduces the FSB's cyber incident reporting (CIR) recommendations following a public consultation.

Among other things, the FSB Chair notes that:

- ongoing surveillance has highlighted vulnerabilities relating to elevated debt levels, business models based on presumptions of low and stable interest rates, stretched asset valuations, and the combination of leverage and liquidity mismatches in non-bank financial intermediation (NBFIs);
- the financial reforms following 2008 have assisted in making the banking sector better able to absorb adverse shocks, but recent events provide important lessons for financial authorities, including for bank prudential and resolution frameworks;
- the FSB is working closely with the Basel Committee on Banking Supervision (BCBS) and other standard-setting bodies to draw out these lessons and consequent policy priorities; and
- the FSB continues to prioritise its programme of reforms to address vulnerabilities in and enhance the resilience of NBFIs.

FSB reports on cyber incident reporting

The FSB has published a [final report](#) setting out recommendations to achieve greater convergence in CIR.

The report identifies commonalities in CIR frameworks and practical issues associated with the collection and sharing of cyber incident information. It takes into account responses received to the FSB's consultation launched in

October 2022 and sets out 16 recommendations to address issues with a view to promoting best practices in CIR.

According to the FSB, a one-size-fits-all approach is not feasible or preferable and as such, financial authorities and financial institutions (FIs) are welcomed to choose to adopt the recommendations as appropriate in a manner consistent with their legal and regulatory framework.

Alongside the final report, the FSB has also published:

- a [report](#) on the new format for incident reporting exchange (FIRE) concept outlining the potential benefits, risks and costs of a common reporting format, and how the FSB will take forward the development of FIRE; and
- an [updated cyber lexicon](#) to include new terms such as insider threat, phishing and ransomware and to clarify existing definitions.

Operational resilience: UK supervisory authorities launch survey on possible critical third party regime

The Bank of England (BoE), Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) have issued a [survey](#) on the costs to service providers of implementing a potential critical third party (CTP) regime in the UK.

The survey relates to proposals set out in the [July 2022 discussion paper](#) on CTP operational resilience (DP3/22) and seeks information from service providers to the UK financial sector on the estimated additional cost of applying the proposed resilience standards and testing requirements to their existing operational resilience activities.

The survey closes on 17 May 2023. Subject to the progress of the Financial Services and Markets Bill, the authorities intend to consult on proposed requirements in 2023.

FCA and BoE publish joint statement on USD LIBOR transition

The FCA, BoE and Working Group on Sterling Risk-Free Reference Rates (Working Group) have published a [joint statement](#) on the transition away from USD LIBOR to risk-free reference rates (RFRs).

The USD LIBOR panel ceases on 30 June 2023. The BoE, FCA and Working Group encourage market participants to:

- actively transition USD LIBOR contracts ahead of the cessation of the USD LIBOR panel;
- ensure readiness for implementation of USD LIBOR fallbacks, including planned central counterparty (CCP) conversion events and operationalisation of the ISDA 2020 IBOR Fallbacks Protocol;
- ensure they transition to the most robust RFRs; and
- continue to actively transition any remaining legacy contracts from synthetic GBP LIBOR to SONIA.

The BoE, FCA and Working Group encourage the continued focus of market participants on active transition to help ensure a smooth transition to robust alternative rates such as SOFR, and the continued wind-down of any remaining GBP LIBOR exposures.

PRA consults on fees for 2023/24

The PRA has published [consultation paper](#) CP7/23 setting out its proposals for the PRA fees for 2023/24.

The proposals include:

- the fee rates to meet the PRA's 2023/24 annual funding requirement (AFR);
- changes to the internal model application fees and the model maintenance fee;
- updates to Supervisory Statement 3/16 to include the information provided in Fees 2.9 and 2.10;
- setting out how the PRA intends to distribute a surplus from the 2022/23 AFR; and
- the retained penalties for 2022/23.

Comments are due by 12 May 2023. The PRA proposes to publish the changes resulting from CP7/23 on 29 June 2023 and proposes 3 July 2023 as the implementation date.

EU Pilot Regime: French financial authorities set out conditions for assessment of DLT market infrastructures applications

The three French financial regulatory authorities – the Autorité de contrôle prudentiel et de résolution (ACPR), Banque de France, and Autorité des marchés financiers (AMF) – have [published](#) a joint statement addressed to sponsors of distributed ledger technology (DLT) market infrastructures. In the statement, the authorities explain how to apply for an authorisation under the EU Pilot Regime, how to submit an application for specific permissions, applicable exemptions and/or compensatory measures in France.

Sustainable finance: CSSF sets out supervisory priorities

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has provided a [general overview](#) of its supervisory priorities in the area of sustainable finance. The overview is not to be construed as an exhaustive or definitive list, but is intended to draw the attention of the financial sector to a number of prominent matters to be addressed in this area. If deemed necessary, supervision priorities may be adjusted, and the CSSF's duties of ongoing prudential supervision may also warrant other ESG-related aspects to come under scrutiny.

The CSSF's supervisory priorities for credit institutions are as follows:

- transparency and disclosures obligations for credit institutions which fall within the scope of Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (SFDR) through the revised long form report;
- off-site reviews of the SFDR website disclosures at entity and product level will be performed on a sample basis;
- transversal reviews of Pillar 3 disclosures on ESG risks with possible subsequent follow up with the institutions concerned;

- climate-related and environmental risks integration and mitigation through a self-assessment exercise on climate related and environmental risks with a new sample, on-site inspections and a sample-based review of the remuneration policies and practices; and
- understanding where the industry stands in the practical implementation of the MiFID rules related to sustainability, including through on-site inspections and other actions.

Supervisory priorities for investment fund managers (IFMs) include the continued verification of:

- compliance with SFDR requirements regarding the integration of sustainability risks in the activities of IFMs, including their organisational and governance arrangements and related website disclosures;
- compliance with SFDR, SFDR RTS and the Taxonomy Regulation regarding the provision of sustainability-related information in pre-contractual and periodic documentation of financial products;
- the consistency of sustainability-related disclosures in fund documentation and marketing material;
- the compliance by IFMs with product related website disclosure; and
- portfolio holdings, so that they reflect the name, the investment objective, the strategy, and the characteristics displayed in the documentation to investors.

The CSSF has indicated that it will continue to provide clarifications to the investment fund industry through Q&As or similar guidance.

The CSSF's supervisory priorities for investment firms include:

- establishing a self-assessment questionnaire to be addressed to all investment firms, as part of the contemplated reform of the long-form report, including in particular to assess compliance with SFDR disclosure obligations for investment firms providing investment advice and portfolio management;
- the implementation of a gradual approach to the supervision of ESG risks for investment firms, prioritising the recognition of ESG risks in investment firms' strategies and governance arrangements. The CSSF has also announced a related update of Circular CSSF 20/758 in due course; and
- as regards MiFID rules related to sustainability, the same priorities as for credit institutions.

With regard to the CSSF's supervisory priorities for issuers, the review procedures will address both the aspects covered by European common enforcement priorities (ECEP) for the 2022 annual reports and the follow-up to the observations made during the CSSF's 2022 campaign. The information required under Article 8 of the Taxonomy Regulation (disclosures of alignment of economic activities with climate change mitigation and adaptation objectives) for relevant issuers is also one of the ECEPs for the upcoming campaign.

Finally, the CSSF has provided information about its involvement in cooperation activities at international level and a simplified overview of

supervision exercises in the area of sustainable finance, as currently planned by the ESAs.

CSSF issues circular on application of ESMA guidelines on standard forms, formats and templates to apply for permission to operate a DLT market infrastructure

The CSSF has issued [Circular 23/832](#) on the application of the European Securities and Market Authority (ESMA) guidelines on standard forms, formats and templates to apply for permission to operate a DLT market infrastructure.

The CSSF, in its capacity as competent authority under Regulation (EU) 2022/858 on a pilot regime for market infrastructures based on DLT, applies the ESMA guidelines, which were published on 8 March 2023, and has integrated them into its administrative practice and regulatory approach with a view to promoting supervisory convergence in this field at EU level. All concerned entities shall duly comply with them.

In addition to the information that is mentioned in the guidelines, in accordance with the Pilot Regime Regulation, applicants for a specific permission to operate a DLT Multilateral Trading Facility (DLT MTF), a DLT Settlement System (DLT SS) or a DLT Trading and Settlement System (DLT TSS) are reminded that they may have to simultaneously present further information to apply as a central securities depository (CSD) or as an investment firm or to operate a regulated market or to demonstrate compliance with MiFID2 or the Central Securities Depositories Regulation (CSDR) (see Articles 8(3), 9(3) and 10(3) and (5) of the Pilot Regime Regulation). Such further information is not covered by the guidelines.

The guidelines, which are attached to the circular, apply as of 23 March 2023.

The circular applies with immediate effect and to all entities intending to apply for specific permissions to operate a DLT market infrastructure as defined in Article 2(5) of the Pilot Regime Regulation.

MAS revises guidelines on licensing, registration and conduct of business for fund management companies

The Monetary Authority of Singapore (MAS) has [revised](#) its existing guidelines on licensing, registration and conduct of business for fund management companies (FMCs).

Amongst other things, the MAS has revised the guidelines under:

- paragraph 3.7 on fit and proper criteria to provide that FMCs are required to perform adequate due diligence checks on their prospective representatives and employees, and such checks should include reference checks with previous employers and where prospective representatives are hired to manage an investment strategy based on their track record, the FMCs should, before making the appointment, validate that track record, including back-testing the investment strategy with historical data;
- paragraph 3.8 on competency of key individuals to provide that the CEO, senior management and directors who are responsible for exercising oversight of the FMCs' investment activities should collectively have relevant experience in all of the asset classes, markets and investment strategies that the FMC will invest in, and be able to properly manage the risks associated with these asset classes, markets and strategies;

- paragraph 3.16.3 on risks management framework, to provide that the MAS expects FMCs to demonstrate that they have put in place measures to address risks and have clear lines of escalation in their risk management framework; and
- paragraph 4.1.5 on termination of funds to provide that the MAS expects FMCs to file for cessation of their regulatory status if they are no longer conducting the activity of fund management themselves; o to ensure an orderly winding down of their business prior to cessation if they intend to wind down their business; to ensure that all funds and managed accounts managed or advised by them have been either transferred to another fund management company or liquidated and all underlying assets and moneys returned to their beneficial owners or customers; and to ensure an orderly transition of their fiduciary responsibility in cases where the investment management of any fund is to be transferred to another manager.

In addition, the MAS has included the following new paragraphs:

- 4.1.6 on complaints handling, which provides that the MAS expects FMCs to handle customer complaints and feedback effectively and promptly; clearly identify senior management members who are responsible for handling customer complaints; and document and communicate the escalation and review process to all the employees of the FMC;
- 4.1.7 on oversight of individuals, which provides that the MAS expects FMCs to put in place an appropriate governance structure to ensure that the FMC is able to effectively monitor the conduct of individuals who carry out activities for and on its behalf on an ongoing basis; put in place documented systems and controls to demonstrate that the FMC has exercised oversight of the activities of the individuals carrying out activities for and on its behalf; and
- establish and implement a disciplinary action framework to hold individuals accountable for their actions and conduct.

RECENT CLIFFORD CHANCE BRIEFINGS

ESG in the European (UK & Continental Europe) equity capital markets – inching forward?

ESG – environmental, social and governance – considerations are increasingly important for the equity capital markets (ECM), not only for companies whose core business is ESG-driven or those companies motivated by the reputational or financial benefits of ESG performance, but also for all issuers and market participants.

In this briefing, the eighth in our European Capital Markets Briefing Series, we look at ESG disclosure requirements in the context of initial public offerings (IPOs) in particular, as well as the key challenges presented by the contrasting requirements for companies preparing to list and those already listed, and the issues surrounding the use of third-party ESG data and ratings. Through this discussion, the briefing highlights the significant progress that needs to be made before ESG considerations are thoroughly and efficiently embedded in the processes of European ECM.

<https://www.cliffordchance.com/briefings/2023/04/esg-in-the-european-equity-capital-markets---inching-forward-.html>

Bank depositor preference regimes — Policy advantages and disadvantages

The policy debate is again turning to how best to protect depositors with failed banks by ranking their deposits above other senior unsecured creditors in the creditor hierarchy in insolvency. While many jurisdictions already have depositor preference regimes, some do not and others, in particular the EU, are reconsidering their design and scope.

This briefing paper reviews:

- the types of depositor preference regime that may be operated by banks' home countries;
- the application of depositor preference regimes by host countries in relation to local branches of foreign banks and by home countries in relation to foreign branches of domestic banks;
- the policy advantages and disadvantages of depositor preference regimes; and
- the interplay of the interests of home countries and host countries in, and the impact of industry structure on, the design and application of depositor preference regimes.

The design and application of depositor preference regimes is particularly important in relation to the failure of smaller or medium-sized banks with significant levels of deposit funding, especially where a large part of the deposit base is not covered by deposit insurance.

<https://www.cliffordchance.com/briefings/2023/04/bank-depositor-preference-regimes-policy-advantages-and-disadvan.html>

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