



29 November 2021

Delay of SFDR Level 2 Measures until 1 January 2023

Introduction

As readers will be aware, any fund which has been classified as an “Article 8” fund or an “Article 9” fund under the SFDR¹ has been subject to certain high level and principles-based disclosure obligations set down in the SFDR since 10 March 2021. The “Level 1” Taxonomy Regulation requirements, which will also require updates to pre-contractual documentation for UCITS and AIF funds, will apply from 1 January 2022².

The European Commission announced in July of this year that “Level 2” SFDR disclosure requirements (which also include Taxonomy-related disclosures) (**SFDR Level 2 Measures**) would apply from 1 July 2022.

Application Date of SFDR Level 2 Measures

In a [letter](#) sent to the European Parliament and European Council dated 25 November 2021 (**Commission Letter**), the European Commission has confirmed that the SFDR Level 2 Measures will now apply from 1 January 2023.

This is likely to be welcome news for fund management companies in light of the delay in finalising the SFDR Level 2 Measures and the significant data challenges currently being encountered in gathering the necessary data to adhere to the very prescriptive and detailed disclosures which will need to be made under the SFDR Level 2 Measures.

While the Commission Letter is relatively brief, it does indicate that those fund management companies which are required, or voluntarily choose to, report on the principal adverse impacts (**PAI**) of their investment decisions on sustainability factors under Article

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¹ Regulation (EU) 2019/2088

² Disclosure obligations relating to the environmental objectives of climate change mitigation and climate change adaptation apply from 1 January 2022 with the disclosure obligations relating to the remaining four environmental objectives applying from 1 January 2023.

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4 of the SFDR, will be required to comply with the detailed disclosure obligations imposed under the SFDR Level 2 Measures by 30 June 2023 in respect of a reference period running from 1 January 2022 to 31 December 2022. In practice, this would mean that such fund management companies would be required to implement the necessary compliance framework to comply with the detailed PAI reporting in the course of 2022 in order to be able to publish a report containing information in respect of the relevant reference period by 30 June 2023.

Implications for MiFID II suitability assessment rules

Under revised suitability assessment rules being introduced under MiFID II which are due to apply from 2 August 2022 (**MiFID Suitability Assessment Rules**), EU investment firms which provide the services of portfolio management or investment advice to their clients will be required to ask clients whether they have any sustainability preferences and if so, establish whether the client wants to invest in a fund with a minimum allocation to “sustainable investments” or “taxonomy-aligned” investments.

It remains to be seen whether the application of the MiFID Suitability Assessment Rules will also be delayed until 1 January 2023 (or later) at which point the required disclosures on asset allocation will need to be included in a fund’s pre-contractual documentation in order to comply with the SFDR Level 2 Measures.

Central Bank Fast Track Process

As outlined in our recent [briefing](#), the Central Bank had confirmed that it would operate a fast-track process in respect of filings made in order to comply with the SFDR Level 2 Measures between March and May of 2022. It will be interesting to see whether it will proceed with a (presumably delayed) fast-track process in respect of such filings in light of the delay of entry into force of the relevant disclosure obligations until 1 January 2023. We will keep readers updated as soon as any clarity emerges on this point.

Please get in touch with your usual Dillon Eustace contact if you have any questions arising from this briefing.

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