



CSSF FAQ Sustainable Finance Disclosure Regulation (SFDR)

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CONTEXT

The following Frequently Asked Questions (FAQs) aim at providing further clarity on aspects of Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial sector (SFDR).

The FAQs apply to:

- **Financial Market Participants (FMPs):**

- (a) Alternative Investment Fund Managers (AIFMs);
- (b) Management Companies of an Undertaking for Collective Investment in Transferable Securities (UCITS Management Companies);
- (c) Managers of a qualifying venture capital fund registered in accordance with Article 14 of Regulation (EU) No 345/2013; and
- (d) Managers of a qualifying social entrepreneurship fund registered in accordance with Article 15 of Regulation (EU) No 346/2013

- **Financial Products:**

- (a) Alternative Investment Funds (AIFs); and
- (b) Undertakings for Collective Investment in Transferable Securities (UCITS)

as referred to under Article 2 SFDR.

The present FAQs are to be read in conjunction with the questions and answers of the European Commission on SFDR, clarifications brought by the European Supervisory Authorities (ESAs) on SFDR and CSSF Communiqués on SFDR, which Section I of the present FAQ endeavours to consolidate. Section I also draws the attention of industry participants to some key publications on the topic. Section II covers any additional clarifications provided by the CSSF.

CSSF FAQ Sustainable Finance Disclosure Regulation (SFDR)

DEFINITIONS

AIF(s):	Alternative Investment Fund(s)
AIFM(s):	Alternative Investment Fund Manager(s)
FMP(s):	Financial Market Participant(s)
IFM(s):	Investment Fund Manager(s)
PM(s):	Portfolio Manager(s)
SFDR:	Regulation (EU) 2019/2088 of 27 November 2019 on sustainability-related disclosures in the financial services sector
SFDR RTS:	Commission Delegated Regulation (EU) of 2022/1288 of 6 April 2022 supplementing Regulation (EU) 2019/2088 of 27 November 2019 on sustainability-related disclosures in the financial services sector
TR:	Regulation (EU) 2020/852 of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088
UCI(s):	Undertakings for Collective Investment(s)



Commission de Surveillance
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*This document will be updated when necessary and the CSSF reserves the right to adapt its approach to any matter covered by the Q&A at any time.
You should regularly check the website of the CSSF in relation to any matter of importance to you to see if questions have been added and/or positions have been adapted.*

Update information

02/12/2022	First publication
13/03/2023	Modification of Section I: Key European and CSSF publications: CSSF communiqués and Other publications, publication of questions 7, 8 and 9



CSSF FAQ Sustainable Finance Disclosure Regulation (SFDR)

Section I: Key European and CSSF publications

The CSSF draws the attention of industry participants to the following publications:

Clarifications at European level

- [Question related to Regulation \(EU\) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector \(Sustainable Finance Disclosure Regulation 2019/2088\)](#) – **published by the European Commission on 14 July 2021**
- [Updated Joint ESA Supervisory Statement on the application of the Sustainable Finance Disclosure Regulation \(JC 2022 12\)](#) – **24 March 2022**
- [Questions related to Regulation \(EU\) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector \(SFDR\)](#) – **published by the European Commission on 25 May 2022**
- [Clarifications on the ESAs' draft RTS under SFDR \(JC 2022 23\)](#) – **2 June 2022**
- [Questions and answers \(Q&A\) on the SFDR Delegated Regulation \(Commission Delegated Regulation \(EU\) 2022/1288\) \(JC 2022 62\)](#) – **17 November 2022**

CSSF Communiqués

- [Application of Regulation \(EU\) 2019/2088 on the sustainability-related disclosures in the financial services sector and related technical standards](#) – **06 November 2020**
- [Communication on regulatory requirements and fast track procedure in relation to Regulation \(EU\) 2019/2088 on the sustainability-related disclosures in the financial services sector](#) – **16 December 2020**
- [SFDR Disclosures Confirmation Letter](#) – **16 December 2020, updated 5 February 2021**

- [Communication on the SFDR fast track procedure and the deadline of 10 March 2021 - 05 February 2021](#)
- [Announcement on the application of Regulation \(EU\) 2019/2088 on the sustainability-related disclosures in the financial services sector and related technical standards - 12 March 2021](#)
- [Communication on regulatory requirements and fast track procedure \(UCITS only\) in relation to Regulation \(EU\) 2020/852 on the establishment of a framework to facilitate sustainable investments and Regulation 2019/2088 on sustainability-related disclosures in the financial services sector - 02 December 2021](#)
- [Announcement on the application of Regulation \(EU\) 2019/2088 on the sustainability-related disclosures in the financial services sector and on the taxonomy-alignment related product disclosures of Regulation \(EU\) 2020/852 - 01 April 2022](#)
- [Publications related to Regulation \(EU\) 2019/2088 - SFDR and Regulation \(EU\) 2020/852 - the EU Taxonomy Regulation - 15 June 2022](#)
- [Communication to the investment fund industry on regulatory requirements in relation to Regulation \(EU\) 2019/2088 on sustainability-related disclosures in the financial services sector \(SFDR\) and upcoming entry into force of SFDR Level 2 provisions \(SFDR RTS\) - 27 July 2022](#)
- [Communication to the investment fund industry on SFDR RTS confirmation letter - 06 September 2022](#)
- [Communication to the investment fund industry on SFDR RTS confirmation letter - Update - 09 November 2022](#)
- [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 sector \(SFDR\) - 01 February 2023](#)

Other publications

- [ESMA Supervisory Briefing on Sustainability risks and disclosures in the area of investment management](#) – **31 May 2022**
- [List of additional SFDR queries requiring the interpretation of Union law](#) – **9 September 2022**

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Section II: CSSF FAQs

I. Updates of prospectuses/issuing documents

Q1. Nature of the changes made to the SFDR RTS pre-contractual templates: Should changes to Articles 8 and 9 SFDR RTS pre-contractual templates (the “templates”) follow the same regime as any other changes made to the prospectus/issuing document and which changes could be considered as material?

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Yes. When included in the prospectus/issuing document, the template(s) form an integral part of the prospectus/issuing document. There are no specific requirements in the SFDR regarding the review of pre-contractual disclosures made in line with Articles 8 and 9 SFDR.

According to applicable laws and regulations, a prospectus/issuing document (including its annexed template(s)) should include the information necessary for investors to be able to make an informed judgement of the investment proposed to them. In this context, in respect of funds subject to supervision by the CSSF, changes to the template(s) must be submitted to the CSSF for approval.

Changes to the template(s) in relation to (i) figures such as minimum committed percentages, (ii) the binding elements of the investment strategy and/or (iii) benchmark can be considered as material change(s) as defined under Circular CSSF 14/591 and as assessed on a case-by-case basis.

Q2. Qualification of a change to a prospectus/issuing document which is strictly limited to introducing templates under the SFDR RTS: Is the introduction of templates following the entry into force of the SFDR RTS to be considered as a material change, notably in the sense of Circular CSSF 14/591 in relation to UCIs subject to the Law of 17 December 2010?

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No. The mere introduction of the templates in order to comply with the applicable legal and regulatory requirements does not qualify as material change. The CSSF reserves the right to assess the materiality of any change other than the mere introduction of the templates under the SFDR RTS on a case-by-case basis and in line with the provisions of Circular CSSF 14/591.

II. Website disclosures

Q3. Compliance by IFMs with website disclosure requirements of Article 10 SFDR: How should Luxembourg IFMs ensure disclosure with the website disclosure requirements of Article 10 SFDR especially in cases where the portfolio management function has been delegated?

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Delegation of portfolio management by the IFM has no impact on the accountability and responsibility of the delegator, i.e. the IFM.

Thus, the Luxembourg IFM is responsible for the disclosure requirements of Article 10 SFDR in relation to the relevant financial product for which it acts as FMP, regardless of the delegation of the portfolio management function to a portfolio manager (PM).

In this respect, the Luxembourg IFM must ensure that all relevant information pursuant to Article 10 SFDR is made available on its website or on another website, for example the website where fund-related documentation is usually made available to investors (such as the financial product's own website, the website of its initiator or that of the PM). In any case, cross references must be made from the IFM's website to the relevant website where all relevant information pursuant to Article 10 SFDR is made available.

III. Pre-contractual disclosures

Q4. Nature of the disclosure of investment thresholds under SFDR: Do minimum thresholds of investments that funds disclosing under Article 8 or Article 9 SFDR set out in their prospectus/issuing document as a result of the provisions of the SFDR RTS represent binding commitments of the investment strategy (for instance minimum share of sustainable investments for funds disclosing under Article 9 SFDR, minimum threshold of investments to meet the environmental or social characteristics promoted by funds disclosing under Article 8 SFDR, the degree of Taxonomy alignment of funds disclosing under Articles 8 and 9 SFDR)?

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Yes, minimum thresholds of investments shall be considered as binding commitments of the investment strategy of the fund. The IFMs must ensure ongoing compliance with all the rules laid down in the prospectus/issuing document of the funds they manage, with the depositary being in charge of the independent monitoring of the compliance of investment restrictions as per applicable legal provisions related to obligations of depositary oversight.

Q5. Sustainable investments during the life-cycle of investment funds disclosing under Article 9 SFDR: Shall “sustainable investments” under Article 9 SFDR meet at all times, i.e. during the life-cycle of the fund, the conditions of Article 2(17) SFDR?

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As clarified in the Questions related to SFDR published by the European Commission on 14 July 2021, a financial product to which Article 9 SFDR applies may invest in a wide range of underlying assets, provided these underlying assets qualify at all times as “sustainable investments”, as defined in Article 2(17) SFDR. “Sustainable investments” may include investments into environmentally sustainable economic activities within the meaning of Article 3 of Regulation (EU) 2020/852 (TR).

As a consequence, the investments should meet the above-named qualifications at the date of the actual investments and on an ongoing basis during the life-cycle of the fund. Therefore, monitoring procedures must be in place to verify at all times compliance with Article 2(17) SFDR together with, where relevant, Article 3 of TR.

Q6. Use of exclusion strategies by investment funds disclosing under Article 8 SFDR and Article 9 SFDR: Are exclusion strategies sufficient for funds disclosing under Articles 8 and Article 9 SFDR?

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Recital (16) of the SFDR RTS warns about “greenwashing” in the context of exclusion strategies. Indeed, while many financial products rely on exclusion strategies, end investors should be provided with the information necessary to assess the composition of the portfolio of the relevant financial product. To prevent mis-selling and greenwashing, Recital (16) of the SFDR RTS requires FMPs to confirm to investors any commitment in terms of excluded investments, in particular as contractually binding elements of the investment strategy, in the information provided on asset allocation and in the information on the sustainability indicator used to measure the effects of such strategies.

In this context and in order to prevent greenwashing, the CSSF would like to highlight the following with regard to pre-contractual disclosure obligations:

Funds disclosing under Article 8 SFDR

Funds disclosing under Article 8 SFDR shall provide a description of how the investment strategy allows to meet the environmental and/or social characteristics. Should only an exclusion strategy be applied as a key element of the ESG strategy applicable to the relevant fund, the CSSF would expect the detailed exclusion strategy to allow investors to understand how the fund's environmental and/or social characteristics are being met.

Funds disclosing under Article 9 SFDR

For these funds, an exclusion strategy only is not acceptable. As clarified in the Questions related to SFDR published by the European Commission on 14 July 2021, for a fund to which Article 9 SFDR applies, the underlying assets of a fund disclosing under Article 9 must qualify as "sustainable investments". In addition to "sustainable investments", investment funds disclosing under Article 9 may include other investments for certain specific purposes such as hedging or liquidity which need to fit the overall sustainable investment objective of the fund.

In this context, the CSSF considers that an exclusion strategy only is not sufficient for a fund to meet the aforementioned requirements. Hence, the CSSF expects that an inclusion strategy setting out the positive investment selection process is mandatory for funds disclosing under Article 9 SFDR in their pre-contractual information in order to demonstrate how all underlying investments meet the conditions of Article 2(17) SFDR. An exclusion strategy, which would be in line with the investment strategy and the binding positive investment selection process of the fund, can be used on top of the positive selection process.

Q7. Use of ESG and/or sustainability related terminology in fund names: Are there any ESG and/or sustainability related considerations that FMPs need to take into account in relation to fund names?

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Article 2 SFDR RTS requires FMPs to provide the information required by the SFDR RTS in a manner that is notably easily accessible, simple, fair, clear and not misleading. The CSSF reminds industry participants that this requirement **also** applies to fund names. Funds' names should not be misleading, as the disclosure of sustainability characteristics should be commensurate with the effective application of those characteristics to the fund.

The ESMA Supervisory Briefing on Sustainability risks and disclosures in the area of investment management ("Supervisory Briefing") sets forth that the use of terms such as "ESG", "green", "sustainable", "social", "ethical", "impact" or any other ESG-related terms should be used only when supported in a material way by evidence of sustainability characteristics, themes or objectives that are reflected fairly and consistently in the fund's investment objectives and policy and its strategy as described in the relevant fund documentation. The Supervisory Briefing also provides additional principles-based guidance on fund names.

The CSSF expects FMPs, whether they are disclosing under Articles 6, 8 or 9 SFDR to 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 Supervisory Briefing. Finally, the CSSF expects FMPs to take due consideration of any further development on the topic at European level.

Q8. Methodology used to define sustainable investments: Shall the methodology used to define sustainable investments be made available to investors?

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The CSSF acknowledges that the ESAs have included in their List of additional SFDR queries requiring the interpretation of Union law a question to the European Commission, in order to understand whether an investment in an investee company which has one economic activity, among several other economic activities, that contributes to an environmental or social objective (and none of the economic activities significantly harm any environmental or social objective and the company follows good governance practices) would be considered to be a "sustainable investment" as a whole or in part.

Article 2 SFDR RTS requires FMPs to provide the information required by the SFDR RTS in a manner that is notably easily accessible, simple, fair, clear and not misleading. Article 151(1) of the Law of 17 December 2010 sets out that the fund prospectus shall include information necessary for investors to be able to make an informed judgement of the investment proposed to them. Article 10 SFDR notably requires FMPs to publish and maintain on their websites information on the methodologies used to assess, measure and monitor the impact of the sustainable investments selected for the financial product, including its data sources, screening criteria for the underlying assets and the relevant sustainability indicators used to measure the overall sustainable impact of the financial product. In this respect, 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 (for example the threshold used when applying a pass-fail approach), be made available by FMPs to investors via appropriate means, like for example, through mandatory disclosure templates, prospectus/issuing document and/or website disclosures.

Q9. Efficient portfolio management (“EPM”) techniques: Can EPM techniques used for hedging purposes fall within the “remaining portion” of the investment portfolio of funds disclosing under Article 9 SFDR?

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In line with SFDR RTS and Questions related to SFDR published by the European Commission on 14 July 2021, a fund disclosing under Article 9 SFDR may next to “sustainable investments” (i.e. in the “remaining portion” of the investment portfolio), also include investments or techniques used for hedging purposes or relating to cash as ancillary liquidity, provided that those are in line with the sustainable investment objective of the fund.

In this context, 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. The CSSF reminds FMPs that, as set forth by Circular CSSF 08/356, EPM techniques may be used for different purposes, including for the purpose of the reduction of risk. FMPs are responsible for assessing the precise purpose of any use of EPM techniques and thus whether those could fall within the “remaining portion” of the investment portfolio when used in the context of funds disclosing under Article 9 SFDR.

IV. Periodic disclosures

Q10. Application date of periodic disclosure requirements under SFDR RTS: What is the application date of the periodic disclosure requirements laid down in the SFDR RTS providing notably for the presentation of the information of Article 11 of the SFDR in an annex to the annual report by using the mandatory templates set out in the Annexes IV and V of the SFDR RTS?

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Annual reports of UCITS and AIFs (independently of their financial year-end), issued as from 1 January 2023, with fund(s) disclosing under Article 8 and/or Article 9 SFDR, shall comply in accordance with the guidance given in the document “Updated Joint ESA Supervisory Statement on the application of the Sustainable Finance Disclosure Regulation” dated 24 March 2022 (JC 2022 12) with the product disclosure requirements in periodic reports laid down in Article 11 SFDR and further clarified by the SFDR RTS, including the information to be presented in an annex to the annual reports by using the mandatory templates.



Commission de Surveillance du Secteur Financier

283, route d'Arlon

L-2991 Luxembourg (+352) 26 25 1-1

direction@cssf.lu

www.cssf.lu