

Administrative sanction of 15 October 2024 for non-compliance with professional obligations related to general organisational requirements and rules of conduct

Luxembourg, 29 November 2024

Administrative decision

On 15 October 2024, the CSSF imposed an administrative fine of EUR 56,500 on the investment fund manager Aviva Investors Luxembourg S.A. (the “**Manager**”) subject to Chapter 15 of the amended Law of 17 December 2010 relating to undertakings for collective investment (the “**Law of 2010**”) and authorised as alternative investment fund manager according to the provisions of the amended Law of 12 July 2013 on alternative investment fund managers.

Legal framework/motivation

The administrative fine was imposed by the CSSF pursuant to Article 148(2)(g), Article 148(2)(k) and Article 148(4)(e) of the Law of 2010 read together, for failure to comply with the provisions of Article 109(1)(a) of the Law of 2010 regarding the requirements to have sound administrative procedures and adequate internal control mechanisms, and the provisions of Article 111(a) and (b) of the Law of 2010 regarding the rules of conduct.

In order to determine the type and amount of the administrative sanction, the CSSF considered, pursuant to Article 149a of the Law of 2010 (i) the gravity and duration of the breaches existing at the time of the on-site inspection, (ii) the conduct and past record of the Manager as well as (iii) the level of cooperation of the Manager with the CSSF, in due respect of the principle of proportionality.

In addition, the CSSF duly took into consideration the fact that the Manager confirmed having implemented corrective measures in order to remedy to the identified breaches.

The professional obligations breached are quoted in the relevant provisions of:

- the Law of 2010;
- CSSF Regulation No 10-04 transposing Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company (the “**CSSF Regulation No 10-04**”);

as applicable at the time of the facts.

Legal basis for the publication

The publication is made pursuant to the provisions of Article 149(1), second sub paragraph of the Law of 2010, insofar as, following an assessment of proportionality, the CSSF considered that the present publication on a nominative basis is not disproportionate and does not jeopardise the stability of the financial markets or an ongoing investigation.

Context and major cases of non-compliance with the professional obligations identified

This administrative fine is imposed following a thematic on-site inspection (the "**Inspection**") on the Manager, focusing on sustainability/Environmental, Social and Governance (hereafter "**ESG**") aspects. During the Inspection, carried out between 3 October 2022 and 11 May 2023, the CSSF identified persistent breaches in the internal governance framework of the Manager.

The observations made by the CSSF concern five sub-funds of an investment fund under management (the "**Fund**") which were classified by the Manager under Article 8 of the Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services (hereafter "**SFDR**") and which, as such, promote "*environmental and social characteristics*".

- In relation to the first sub-fund of the Fund, an investment process was implemented with the aim to filter out assets with the least favorable ESG characteristics. For that purpose, a threshold triggering the exclusion from the investment universe (hereafter the "**Exclusion Threshold**") was defined – under the responsibility of the Manager – and disclosed in the pre-contractual disclosures established in accordance with Article 8 of SFDR (hereafter the "**Pre-Contractual Disclosures**").

For the period from 16 February 2023 to 28 July 2023, the CSSF noted that the portfolio of the first sub-fund did not comply with the investment strategy described in the Pre-Contractual Disclosures which were annexed to the prospectus in force during that period (the "**Prospectus**"). In particular, the CSSF identified the presence of several bonds – representing on average 5.5% of the net assets of the sub-fund – issued by five countries whose ESG score was below the Exclusion Threshold disclosed in the Pre-Contractual Disclosures.

- In relation to the other sub-funds of the Fund, the Manager indicated – in several versions of the Fund's prospectus issued between November 2021 and February 2023 – that those were "*primarily targeting*" different sustainable development goals as defined by the United Nations (the "**SDGs**"). Nevertheless, the CSSF noted that the measures put in place by the Manager did not allow it to ensure that the SDGs disclosed in the Fund's prospectuses were effectively primarily targeted by these sub-funds.

As such, the CSSF concluded that, at the time of the Inspection, the Manager did not comply with the provisions of:

- Article 10(2) of the CSSF Regulation No 10-04 establishing administrative procedures and control mechanism of the management companies, supplementing Article 109(1)(a) of the Law of 2010; and
- Article 26(3) of the CSSF Regulation No 10-04 establishing rules of conduct of the management companies to act in the best interests of the UCITS, supplementing Article 111(a) and (b) of the Law of 2010.