Commission de Surveillance
du Secteur Financier

CSSF Thematic Review on the implementation of sustainability-related provisions in the investment fund industry

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1. Context

The EU sustainable finance legislative framework is still in the process of being implemented, but a set of key regulations have already entered into force:

(i) SFDR is applicable since 10 March 2021 and sets out a broad range of sustainability disclosure obligations on financial market participants (thus including IFMs) in relation to financial products (including UCITS or AIFs) they manage or advise on.

(ii) The TR amends SFDR and introduces additional disclosure requirements for IFMs in relation to financial products which either invest in an economic activity that contributes to an environmental objective or promote environmental characteristics. The first provisions of the TR relating to the objectives of climate change mitigation and climate change adaptation entered into force on 1 January 2022. The provisions relating to the remaining environmental objectives came into force on 1 January 2023.

(iii) SFDR and the TR have been supplemented by the SFDR RTS which entered into force on 1 January 2023 and provide further details on the content and the format of the transparency requirements required under SFDR and the TR.

(iv) The UCITS Directive and AIFMD frameworks were amended by Commission Delegated Regulation (EU) 2021/1255 and Commission Delegated Directive (EU) 2021/1270, as transposed by CSSF Regulation No 22-05, to require IFMs to integrate sustainability risks in their organisational arrangements.

The Supervisory Briefing on sustainability risks and disclosures in the area of investment management published by ESMA in May 2022 provides guidance to national competent authorities regarding the supervision of sustainability-related disclosures and integration of sustainability risks.

In this context and centred on the CSSF's supervisory priorities in the area of sustainable finance as communicated to the industry on 6 April 2023, the CSSF has initiated various supervisory actions in order to verify the correct implementation of the aforementioned sustainability-related requirements in the investment fund industry, which include the following:

(i) on-site inspections on the integration of sustainability-related provisions in the governance of IFMs, initiated in 2022;

(i) an off-site thematic review launched in the second quarter of 2023, during which it assessed the correct implementation by a sample of IFMs of sustainability-related provisions, arising notably from SFDR, the SFDR RTS and the TR, while also giving due account to the principles laid down in the ESMA Supervisory Briefing.

The objective of this report is to inform the industry about the main observations that the CSSF has made in the context of this supervisory work and about the related recommendations for improvements in view of the applicable regulatory requirements.

The CSSF is currently engaging on a bilateral basis with IFMs in relation to the observations made in this context, asking where applicable IFMs to implement the necessary corrective measures in relation to the shortcomings observed.

IFMs shall, in the context of their ongoing assessment of their compliance with the sustainability-related requirements, also take into account the CSSF's observations below. IFMs shall, if applicable, take necessary corrective measures.

2. Definitions

2010 Law:	Law of 17 December 2010 relating to undertakings for collective investment, as amended
2013 Law:	Law of 12 July 2013 on alternative investment fund managers, as amended
AIF(s):	Alternative investment fund(s)
CBDF Regulation:	Regulation (EU) 2019/1156 of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings
ESA(s):	European Supervisory Authority(ies)
ESMA Guidelines on marketing communications :	ESMA guidelines on marketing communications under the Regulation on cross-border distribution of funds (ESMA34-45-1272)
IFM(s):	Investment fund manager(s)
KPI(s):	Key performance indicator(s)
PAI:	Principal adverse impacts
PM(s):	Portfolio manager(s)
SFDR:	Regulation (EU) 2019/2088 of 27 November 2019 on sustainability-related disclosures in the financial services sector, as amended
SFDR RTS:	Commission Delegated Regulation (EU) of 2022/1288 of 6 April 2022 supplementing Regulation (EU) 2019/2088 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the content and presentation of the information in relation to the principle of 'do no significant harm', specifying the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports, as amended

Supervisory Briefing:	ESMA supervisory briefing on sustainability risks and disclosures in the area of investment management of 31 May 2022 (ESMA34-45-1427)
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
UCITS:	Undertaking(s) for collective investment in transferable securities

3. CSSF observations and expectations

3.1 Organisational arrangements of IFMs, including the integration of sustainability risks by IFMs

- **Delegation to third parties**

IFMs remain entirely responsible for ensuring compliance with sustainability-related provisions that apply to them.

Article 110(2) of the 2010 Law and Article 18(3) of the 2013 Law set forth that the IFM's liability is not affected by the delegation of any function to third parties. Point 416 of Circular CSSF 18/698 also includes this principle. Along the same lines, as specified in Question 3 of the CSSF FAQ on SFDR, the CSSF reminds IFMs that, "delegation of portfolio management by the IFM has no impact on the accountability and responsibility of the delegator, i.e. the IFM".

IFMs are responsible for the disclosure requirements under SFDR in relation to the relevant financial product for which they act as IFM, regardless of the delegation of the portfolio management function to the PM. In this respect, IFMs shall ensure that all relevant information pursuant to Article 10 of SFDR is made available on their 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, as regards its financial products, cross references must be made from the IFM's website to the relevant website where all relevant information pursuant to Article 10 of SFDR is made available.

The CSSF also reminds IFMs that, in line with the requirements of Article 26 of CSSF Regulation No 10-4, Article 18 of the 2013 Law and Section 6.2.3 of Circular CSSF 18/698, delegation to third parties must be subject to proper written initial due diligence and ongoing monitoring by the IFM. It is the responsibility of IFMs to ensure that the due diligence performed on third parties takes due account of the sustainability-related obligations.

The CSSF expects the due diligence performed on the delegated PM by IFMs to duly consider the sustainability-related provisions for funds disclosing under Article 8 or 9 of SFDR. IFMs shall notably obtain the full documentation (i.e. on the methodology or model used) explaining how PMs embed sustainability-related provisions in their investment decisions.

The CSSF further specifies that IFMs shall ensure that the KPIs provided by the delegated PM are comprehensive and complete, so as to allow an independent and in-depth review of the performance of the methodology/model used by the PM for the investment selection. Those KPIs shall also be established at appropriate frequency, giving due account to the periodicity of the fund's net asset value calculation.

- **Risk management framework**

Article 43(1) of CSSF Regulation No 10-4 and Article 40(2) of Commission Delegated Regulation (EU) 231/2013, as amended, require IFMs to establish, implement and maintain effective risk management policies and procedures in order to identify, measure, manage and monitor all relevant risks to which the UCITS, or the AIF, they manage is or might be exposed to, thereby referring to market, liquidity, counterparty, other relevant risks (including operational risks) as well as to sustainability risks.

The CSSF noted, based on the review amongst others of the risk management process ("RMP") documents transmitted by IFMs in accordance with Circulars CSSF 11/512 and CSSF 18/698, that the sustainability risks have been integrated in the risk management policies and that there are ongoing efforts to continue to enhance the tools, techniques, and arrangements for managing these risks.

Following the review, as referred to above, the CSSF wishes to provide the following elements of guidance.

The CSSF expects IFMs to address and cover in their risk management and internal governance processes all relevant sustainability risks that, in accordance with Article 2(22) of SFDR, could cause an actual or a potential material negative impact on the value of an investment. Sustainability risks may be relevant for all funds managed by an IFM, including those not disclosing under Article 8 or 9 of SFDR. As a result, IFMs shall establish, implement and maintain processes that provide, as of the product design phase and continuing throughout the entire product life cycle, for the identification and the management of the relevant sustainability risks for each fund under management.

A sustainability risk management process notably involves, amongst others, reflecting the relevant sustainability risks, with the corresponding sustainability risk indicators, in the fund's risk profile, the risk limitation system and the corresponding reporting to the senior management and the board of directors. This also includes, where relevant, the implementation of stress tests and scenario analyses specifically designed towards the relevant sustainability risks for the funds under management.

As a result of the above, it is important to specify that the integration of sustainability risks in the risk management processes is not limited to verifying on an ongoing basis the compliance of the investment portfolios of the funds managed with the ESG-related investment restrictions laid down in precontractual disclosures (e.g. minimum share of sustainable investments for funds disclosing under Article 9 of SFDR, the degree of taxonomy alignment of funds disclosing under Article 8 or 9 of SFDR). As for the other risks to which IFMs are or might be exposed for the funds managed, IFMs shall take a holistic view when integrating sustainability risks.

Regarding investment compliance, the CSSF wishes to point out that IFMs shall have adequate checks/controls in place to monitor the compliance of all ESG-related restrictions laid down in precontractual disclosures.

- **Compliance of IFMs providing portfolio management and investment advisory services with sustainability-related provisions**

The CSSF reminds IFMs managing financial products in accordance with point (8) of Article 4(1) of Directive 2014/65/EU (discretionary portfolio management) and/or providing investment advice in accordance with point (4) of Article 4(1) of Directive 2014/65/EU that SFDR sets forth disclosure obligations on the integration of sustainability risks in their respective activities. IFMs are required to comply with those disclosure obligations at all times.

- **Statement by IFMs that they do consider PAI of their investment decisions on sustainability factors**

As from the entry into force of the SFDR RTS on 1 January 2023, where IFMs consider PAI of investment decisions on sustainability factors, they are required under Article 4 of the SFDR RTS to publish, by 30 June each year, a statement in the format of the template set out in Table 1 of Annex 1 of the SFDR RTS. Pursuant to Article 4(1) of the SFDR RTS, this statement shall be published on the IFM's website, in a separate section titled "Statement on principal adverse impacts of investment decisions on sustainability factors" in the website section "Sustainability-related disclosures" referred to in Article 23 of the SFDR RTS and shall cover the period of 1 January until 31 December of the preceding year, except for IFMs that publish the statement for the first time, as further specified under Article 4(3) of the SFDR RTS.

3.2 Compliance of precontractual disclosures, including product website disclosures

3.2.1 Precontractual disclosures

- **Disclosure of environmental/social characteristics or sustainable objectives**

Pursuant to Article 2 of the SFDR RTS, IFMs shall provide information required by SFDR in a manner that is easily accessible, non-discriminatory, prominent, simple, concise, comprehensible, fair, clear and not misleading for investors.

Article 151(1) of the 2010 Law sets forth that the prospectus shall include the information necessary for investors to be able to make an informed judgement of the investment proposed to them. Point 28 of the Supervisory Briefing further specifies criteria according to which the presentation of disclosures under SFDR is considered to be clear, succinct, fair and not misleading. Point 33 of the Supervisory Briefing provides that the sustainable objectives or characteristics of the fund shall be clearly identified and general expressions without any further specification should be avoided. In case of environmental objectives, a way to clearly identify those objectives is if they

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are referred to in accordance with the categories provided for under Article 9 of the TR.

In consideration of the above, the CSSF expects IFMs to provide in precontractual disclosures sufficient details regarding the environmental/social characteristics or sustainable objectives pursued by a given fund. The description shall not be too general but shall be clearly stated and sufficiently explained so that investors are reasonably able to understand the characteristics or objectives of the investment product that is being offered to them and, consequently, to take investment decisions on an informed basis.

- **Fund names**

The CSSF reminds IFMs that the requirement to provide information that is fair, clear and not misleading also applies to fund names. As further specified in Question 7 of the CSSF FAQ on SFDR, 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 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.

In consideration of the above, the CSSF expects IFMs, whether they are disclosing under Article 6, 8 or 9 of SFDR, to use fund names that are 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 IFMs to take due consideration of any future developments on that topic at European level.

- **Definition of sustainable investment**

The European Commission clarifies in its answers provided on the interpretation of the SFDR, published on 14 July 2021 and amended on 6 April 2023, that SFDR does not prescribe a single methodology to account for sustainable investments, as defined in Article 2(17) of SFDR. The European Commission further specifies in its answer provided on the interpretation of the SFDR, published on 6 April 2023, that SFDR does not set out minimum requirements for qualifying concepts such as contribution, do no significant harm, or good governance, i.e. the key parameters of a sustainable investment and that IFMs shall carry out their own assessment for each investment and disclose their underlying assumptions. Finally, the European Commission further specifies that financial market participants (thus including IFMs) must disclose the methodology they have applied to carry out their assessment of sustainable investments, including how they determine the contribution of the investments to environmental or social objectives, how investments do not cause significant harm to any environmental or social investment objective and how investee companies meet the "good governance practices" requirement.

On that basis, the CSSF expects IFMs, after having carried out their own assessment of sustainable investments, to disclose the underlying assumptions used, in line with the requirements set out above and outlined by the European Commission. The CSSF considers that this information is particularly important to allow investors to make an informed decision of the investment proposed and to ensure adequate comparability between funds. The CSSF expects this information to be provided by IFMs as part of the precontractual disclosures and/or product website disclosures under Article 10 of SFDR. This information shall be sufficiently detailed and easily accessible, so that it can be considered as being comprehensible, clear and not misleading for investors.

- **Fund asset allocation**

The CSSF expects the asset allocation disclosed to be aligned and comprehensive with regard to the environmental/social characteristics promoted by the fund or the sustainable investment objective pursued by the fund. For example, for a fund disclosing under Article 9 of SFDR, the CSSF considers that IFMs shall indicate in the precontractual disclosures a commitment (different from 0%) for the environmental and/or social objectives selected, consistent with the investment policy of the fund and that is also aligned with the contemplated overall minimum proportion of sustainable investments.

- **Consideration of PAI at financial product level**

Article 7(1), point (a) of SFDR requires IFMs which apply Article 4(1), point (a) or Article 4(3) or (4) to provide, in the precontractual disclosures, for each financial product a clear and reasoned explanation of whether and, if so, how a financial product considers the PAI on sustainability factors. The ESAs further specify in clarifications, published on 2 June 2022, the disclosure of PAI of investment decisions on sustainability factors, outlining the possible uses of adverse impact indicators at financial product level. The European Commission further specifies in its answers provided on the interpretation of the SFDR, published on 6 April 2023, the meaning of PAI consideration, setting forth that the description related to the adverse impacts shall include both a description of the adverse impacts and the procedures put in place to mitigate those impacts.

Where PAI are considered within the meaning of Article 7(1), point (a) of SFDR, the CSSF has observed that descriptions provided in precontractual disclosures regarding the consideration of PAI on sustainability factors mostly relate to PAI considered at entity level rather than at fund level. As outlined by the European Commission, the CSSF expects IFMs to provide sufficiently detailed and relevant information on the consideration of PAI which relates to the individual fund under consideration, including references to the procedures put in place to mitigate those impacts.

3.2.2 Product website disclosures (Article 10 of SFDR)

Article 10 of SFDR requires financial market participants (thus including IFMs) to publish and maintain on their websites information for each fund disclosing under Article 8 or 9 of SFDR. Article 23 of the SFDR RTS further specifies that IFMs shall, for each financial product, publish this information in a separate section titled "Sustainability-related disclosures" in the same part of their website as the other information relating to the financial product, including marketing communications. IFMs shall clearly identify the financial product to which the information in the sustainability-related disclosures' section relates and prominently display the environmental/social characteristics or the sustainable investment objective of that financial product. Articles 24 to 36 and Articles 37 to 49 of the SFDR RTS further specify the requirements on the sections and contents of the product website disclosures for funds disclosing under Article 8 or 9 of SFDR, respectively.

- **Easily accessible disclosures**

The CSSF reminds IFMs to ensure that investors and particularly retail investors have an easy and straightforward access to the above-mentioned information in accordance with Article 2 of the SFDR RTS which sets forth that IFMs shall provide information required by SFDR in a manner that is easily accessible, non-discriminatory, prominent, simple, concise, comprehensible, fair, clear and not misleading.

- **"Summary" website section**

The CSSF reminds IFMs to comply with the requirements of Articles 25 and 38 of the SFDR RTS for the description in the "Summary" website section for funds disclosing under Article 8 or 9 of SFDR, respectively. IFMs are thus required to summarise in the "Summary" website section the information contained in the different sections referred to in Article 24 of the SFDR RTS for funds disclosing under Article 8 of SFDR and in Article 37 of the SFDR RTS for funds disclosing under Article 9 of SFDR. The summary section shall have a maximum length of two-sides of A4-sized paper when printed.

- **"Data sources and processing" website section**

The CSSF reminds IFMs to comply with the requirements of Articles 32 and 45 of the SFDR RTS for the description in the "Data sources and processing" website section for funds disclosing under Article 8 or 9 of SFDR, respectively. In the "Data sources and processing" website section, IFMs shall describe all the following:

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(a) the data sources used to attain the sustainable investment objective of the financial product (for funds disclosing under Article 9 of SFDR) or to attain each of the environmental or social characteristics promoted by the financial product (for funds disclosing under Article 8 of SFDR);
(b) the measures taken to ensure data quality;
(c) how data are processed; and
(d) the proportion of data that are estimated.

The CSSF expects IFMs to provide a relevant and sufficiently detailed description, in plain language, to allow investors to make an informed judgement about data sources, how data are processed and the proportion of estimated data. A good practice of clear and comprehensive description for investors the CSSF has observed is IFMs presenting data sources in tabular form with, amongst others, ESG metrics, definitions and data sources.

In addition, IFMs shall ensure consistency between (a) environmental/social characteristics or sustainable objectives, (b) indicators to measure the level of attainment of such characteristics or sustainable objectives and (c) the binding elements of the investment strategy, complemented with appropriate ESG metrics and data sources available, described in the product website disclosures.

- **"Limitations to methodologies and data" website section**

The CSSF reminds IFMs to comply with the requirements of Articles 33 and 46 of the SFDR RTS for the description in the "Limitations to methodologies and data" website section for funds disclosing under Article 8 or 9 of SFDR, respectively. In the "Limitations to methodologies and data" website section, IFMs shall describe all the following:

(a) any limitations to the methodologies and the data sources; and
(b) how such limitations do not affect how the environmental/social characteristics promoted by the financial product are met (for funds disclosing under Article 8 of SFDR) or why such limitations do not affect the attainment of the sustainable investment objective (for funds disclosing under Article 9 of SFDR).

The CSSF expects IFMs to provide a relevant and sufficiently detailed description while avoiding technical jargon, to allow investors to make an informed judgement about any limitations to the methodologies and the data sources. IFMs presenting illustrative or concrete examples of situations in which they are facing material limitations and explaining to what extent those limitations do not affect how the environmental/social characteristics promoted by the financial product are met/do not impact the sustainable investment objective is an example of good practices of clear and comprehensive disclosure for investors that the CSSF has observed.

- **"Engagement policies" website section**

The CSSF reminds IFMs to comply with the requirements of Articles 35 and 48 of the SFDR RTS for the description in the "Engagement policies" website section for funds disclosing under Article 8 or 9 of SFDR, respectively. In the "Engagement policies" website section, IFMs shall describe the engagement policies implemented where engagement is part of the environmental or social investment strategy (for funds disclosing under Article 8 of SFDR) or the sustainable investment objective (for funds disclosing under Article 9 of SFDR), including any management procedures applicable to sustainability-related controversies in investee companies.

The CSSF expects IFMs to provide a relevant and sufficiently detailed description, in plain language, to allow investors to make an informed judgement about the engagement policies applied. The information provided shall allow investors to gain a reasonable understanding of engagement policies. IFMs are expected to describe, in clear and comprehensive terms, the way engagement is part of the investment strategy, depending also on the fund's investment policy and its asset classes.

3.3 Compliance of periodic disclosure information

Article 11 of SFDR, further supplemented by Articles 50 and 58 of the SFDR RTS, requires that specific disclosures be included in the periodic reports of financial products (the "periodic disclosure") disclosing under Article 8 or 9 of SFDR. The periodic disclosure for UCITS and AIFs has to be presented in an annex to their annual report in accordance with the templates set out in Annex IV and Annex V of the SFDR RTS.

- **Content of the periodic disclosure**

Prominent statement

The CSSF reminds IFMs that Articles 50(2) and 58 of the SFDR RTS require that a prominent statement be included in the main body of the annual report setting out that information on the environmental/social characteristics for funds disclosing under Article 8 of SFDR, or information on sustainable investments for funds disclosing under Article 9 of SFDR, respectively, is made available in the annex to the annual report.

Realisation of ESG characteristics/sustainable investment objective

Articles 51(a), (d) and 59(a), (e) of the SFDR RTS specify the information to be provided in response to the question "To what extent were the environmental and/or social characteristics promoted by this financial product met?" in the template set out in Annex IV of the SFDR RTS for funds disclosing under Article 8 of SFDR, or the question "To what extent was the sustainable investment objective of this financial product met?" in the template set out in Annex V of the SFDR RTS for funds disclosing under Article 9 of SFDR, respectively.

Recital 25 of the SFDR RTS further clarifies notably that a minimum set of standardised and comparable quantitative and qualitative indicators, relevant to the design and investment strategy of the product as laid down in the precontractual disclosures, should be disclosed, thereby ensuring consistency between both documents.

In this context, the CSSF expects the periodic disclosure to present the performance of the sustainability indicators used to measure how each of these environmental/social characteristics were met for funds disclosing under Article 8 of SFDR, or the overall sustainability-related impact of the financial product by means of relevant sustainability indicators for funds disclosing under Article 9 of SFDR, respectively.

IFMs should also provide in that context information on the sustainability indicators used, the limitations defined in precontractual disclosures for these indicators (if any) and a quantitative assessment of these indicators realised during the period. When using a specific internal methodology (e.g. scoring methodology), the disclosures should provide adequate transparency on the methodology, together with the underlying assumptions.

Consideration of PAI

Articles 51(e) and 59(f) of the SFDR RTS set forth the information to be provided on PAI on sustainability factors, as referred to in the question "How did this financial product consider principal adverse impacts on sustainability factors?" in the templates set out in Annex IV and Annex V of the SFDR RTS. These articles make an explicit reference to the question "Does this financial product consider principal adverse impacts on sustainability factors?" in the templates set out in Annex II and Annex III of the SFDR RTS for the precontractual disclosures.

In line with the information required on consideration of PAI at financial product level in the precontractual disclosures as referred to above, the reference in the periodic disclosures to a global policy adopted by the IFM and applicable to all funds managed, without any disclosure on individual funds, is not sufficient.

In this context, the CSSF expects IFMs to provide, where applicable, for each fund concerned, sufficiently detailed and relevant information on the PAI considered during the period, taking into account the qualitative and/or quantitative information set out in the precontractual disclosures.

Actions (including shareholder engagements)

In response to the question "What actions have been taken to meet the environmental and/or social characteristics during the reference period?" in the template set out in Annex IV of the SFDR RTS for funds disclosing under Article 8 of SFDR and to the question "What actions have been taken to attain the sustainable investment objective during the reference period?" in the template set out in Annex V of the SFDR RTS for funds disclosing under Article 9 of SFDR, the CSSF expects IFMs to provide, for each fund concerned, information on the concrete actions and/or engagements of the IFM in relation to the investments held during the period, thereby considering the related provisions laid down in the precontractual disclosures. As for the PAI, the reference to a global policy adopted by the IFM, applicable to all funds managed, without any concrete elements on specific actions and/or engagements for the individual fund is not sufficient.

- **Consistency of the periodic disclosure with the precontractual disclosures**

The SFDR RTS requires that IFMs present for each fund disclosing under Article 8 or 9 of SFDR various sets of quantitative information in the templates set out in Annex IV and Annex V of the SFDR RTS (e.g. proportion of investments that attained the environmental/social characteristics during the period, proportion of sustainable investments during the period). This allows investors, amongst others, to compare these figures with the binding commitments set out in the precontractual disclosures and to verify their consistency for the period under review.

In this context, the CSSF reminds IFMs, as stated in Question 4 of the CSSF FAQ on SFDR, that funds shall comply on an ongoing basis with all binding commitments of their respective investment strategy as disclosed in their offering document/prospectus, including the precontractual disclosures (i.e. minimum portion of sustainable investments).

3.4 Fund documentation and marketing communications

- **Consistency of information in fund documentation and marketing communications**

The CSSF reminds IFMs that Article 13 of SFDR requires them to ensure that their marketing communications do not contradict the information disclosed pursuant to SFDR. Point 27 of the Supervisory Briefing provides further specifications on the elements which shall be addressed when assessing this consistency, notably the way the sustainability-related disclosures are presented, the fund's name, the investment objective and policy and the investment strategy. Point 18 of the ESMA Guidelines on marketing communications sets forth that the information presented in the marketing communications should be consistent with the legal and regulatory documents of promoted funds.

The CSSF expects IFMs to take due account of the above provisions in their marketing communications. The information in the marketing communications shall not be limited to general descriptions, shall be specific to the fund under consideration and shall clearly reflect the claims made in the fund documentation, as also set forth under point 34 of the Supervisory Briefing. IFMs are also reminded that paragraphs 2 and 4 of Article 4 of the CBDF Regulation set forth that IFMs shall ensure that marketing communications that contain fund specific information do not contradict or diminish the significance of the information contained in the prospectus for UCITS or information disclosed to investors for AIFs.

- **Presentation of disclosures in marketing communications**

Article 2 of the SFDR RTS requires IFMs to provide information required by SFDR in a manner that is easily accessible, non-discriminatory, prominent, simple, concise, comprehensible, fair, clear and not misleading. The CSSF considers that the obligation also applies to the disclosures on product-level sustainability credentials (such as ESG labels, ESG ratings or ESG certifications), including when part of the marketing communications.

In particular, the CSSF expects that, when IFMs refer to product credentials in the marketing communications, a clear reference to the entity having granted the credential is being made. Investors also need to be able to clearly identify the fund which has been granted the credential as well as the date on which such credential was granted.

Good practices observed by the CSSF include the addition of a clear and visible reference in the fund marketing communications, providing information and a short description of the entity having granted the credential as well as the hyperlink to the website where further information on the credential can be found.

The CSSF also expects the use of hyperlinks in the marketing communications to be limited. In line with point 28 of the ESMA Supervisory Briefing, IFMs are required to ensure that hyperlinks in the marketing communications direct to the exact location where the relevant information may be found, without having investors search for the required information in the volume of general information provided. Finally, IFMs are asked to maintain hyperlinks over time so as to ensure that investors have access to the required information at all times.

A good practice is for IFMs either to indicate in the marketing communications one hyperlink which points to all the sustainability-related information (e.g. fund documentation, marketing communications) of the fund or, for the hyperlink, to direct to the fund's webpage. Investors should then be able to easily find the fund-specific sustainability-related information, by only indicating the name of that fund.

3.5 Portfolio analysis

Point 47 of the Supervisory Briefing sets forth that portfolio holdings of funds have to reflect the name, the investment objective, the strategy and the characteristics displayed in the documentation to investors.

The European Commission further clarifies in its answers provided on the interpretation of the SFDR, published on 14 July 2021 and amended on 6 April 2023, that a financial product disclosing under Article 9 of SFDR may invest in a wide range of underlying assets provided that these underlying assets qualify as "sustainable investments" as defined in Article 2(17) of SFDR. A financial product disclosing under Article 9 of SFDR may, next to "sustainable investments", also include investments for certain specific purposes, such as hedging or, relating to cash, as ancillary liquidity, provided that those investments are in line with the sustainable investment objective of the product.

The CSSF expects IFMs to take account, for the funds disclosing under Article 8 or 9 of SFDR, of the above-mentioned provisions when monitoring the ongoing compliance of their investment portfolios.

For illustration purposes, when exclusion policies are set forth as a binding element in the precontractual disclosures, IFMs shall ensure, firstly, that the portfolio holdings comply at all times with the exclusion criteria contained in the precontractual disclosures and, secondly, that the design of such exclusion policies is consistent with the sustainable objective pursued by funds disclosing under Article 9 of SFDR, or the promotion of environmental and/or social characteristics of funds disclosing under Article 8 of SFDR, respectively.

For example, a fund disclosing under Article 9 of SFDR that excludes investments in companies with a certain percentage of their revenues deriving from sub-activities linked to coal (e.g. coal extraction, coal transformation, and energy generation based on coal), without considering limitation to the coal activity as a whole, might be found to be misaligned with its general sustainability objective.

In addition, when controversies are considered for assessing whether an investment is sustainable and are disclosed as such in the precontractual disclosures, for instance by affirming that concrete cases of misconduct will be scrutinised, the IFMs should ensure that the disclosures to investors on such controversies are sufficiently clear and that they have dedicated control processes/procedures to ensure that the investments remain compliant with the provisions on controversies set out in the precontractual disclosures.

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