



Asset Management & Investment Funds Update

May 2022

Key Dates & Deadlines: Q2 / Q3 2022

DATE	SOURCE	SUMMARY	ACTION/IMPACT
3 June		Central Bank deadline for any notification(s) in respect of the amended list of PCF roles.	<p>Ensure any necessary notifications are filed with the Central Bank in advance of the deadline.</p> <p>See here for further details.</p>
30 June		Transposition deadline for UCITS amendments facilitating preparation of a PRIIPs KID in satisfaction of UCITS KIID rules with effect from the application of PRIIPs rules to UCITS from 1 January 2023.	<p>Advance preparations for compliance with the PRIIPs deadline for UCITS of 1 January 2023, at which point UCITS must produce:</p> <ul style="list-style-type: none"> • a PRIIPs KID for EEA retail investors • either a PRIIPs KID or UCITS KIID for professional investors • a UCITS KIID for any UK investors <p>See here for further details.</p>
30 June (30 September and 31 December)		Second calculation date for entity-level assessment of principal adverse impacts (PAIs) of investment decisions under SFDR Article 4(1)(a), (3) or (4) and SFDR Level 2, Chapter II.	<p>Implement processes and procedures for the collection of data necessary to calculate PAIs on each of the calculation dates during the first PAI reference period of January – December 2022 ahead of the publication of the first PAI statement by 30 June 2023.</p> <p>See here for further details.</p>

Q3 (exact date to be confirmed)		Deadline for filing PPSNs for beneficial owners of ICAVs, ILPs, CCFs and unit trusts with the Central Bank as Registrar for the relevant beneficial ownership register.	Relevant fund vehicles to gather PPSNs for beneficial owners and for those without PPSNs, identify whether a Central Bank reference number is available and, if not, prepare to file declarations in accordance with specified regulatory process. See here for further details.
6 July		Anticipated end of SFDR Level 2 legislative scrutiny period following which, if no objections are raised on the Commission's adopted text, SFDR Level 2 will enter into force and be applicable from the scheduled date of 1 January 2023.	Advance preparations for, as applicable, disclosure of entity-level PAIs and product-level green/social characteristics/objectives using the mandated disclosure templates appended to SFDR Level 2. See here for further details.
31 July		New Central Bank 'Fund Profile V2' regulatory return required to be filed by existing funds (authorised on or before 29 April 2022) in respect of report date 30 April 2022 on ONR.	Following the introduction of a new version of the Fund Profile return, which delayed the December 2021 annual Fund Profile return filing, a once-off mid-year filing of this return by existing funds is required. For future returns, the return dates will revert to as of 31 December and due by 28/29 February beginning with the return for 31 December 2022. See here for further details.
1 August		Effective date for UCITS Directive and AIFMD provisions for the governance and management of sustainability risks and adverse sustainability impacts.	Advance compliance preparations including any necessary updates to investment due diligence, risk management, conflicts of interest and resourcing arrangements for the management of sustainability risk. See here for further details.
2 August		Effective date for MiFID organisational requirements and operating conditions for the integration of sustainability factors, risks and preferences including the amended MiFID client suitability assessment rules.	In-scope fund managers to advance compliance preparations for sustainability risk management rules and update client suitability assessment processes and procedures to reflect new sustainability preference rules. See here and here for further details.
1 September		Last phase of applicants (covered entities with an aggregate average notional amount of non-centrally cleared derivatives greater than €8 billion) subject to the initial margin requirements under EMIR.	This marks the end of the phase-in for initial margin requirements under EMIR. In-scope funds must exchange, on a bilateral basis, initial margin with a threshold not to exceed €50 million and a de minimis minimum transfer amount not to exceed €500,000. See here for further details.

Central Bank SFDR Supervisory Statement

On 27 April 2022, the Central Bank published a supervisory statement on the application of SFDR (the **Central Bank Statement**). The Central Bank Statement follows on from the updated supervisory statement of the European Supervisory Authorities (the **ESA**), published on 24 March last, setting out regulatory compliance expectations for the Taxonomy-related SFDR rules (the **ESA Statement**). Our briefing on the ESA Statement is available [here](#).

Taxonomy-related SFDR rules

With effect from 1 January this year, SFDR Taxonomy-related provisions (SFDR requirements inserted by the Taxonomy Regulation) require funds in scope of SFDR Articles 8 or 9 with environmental characteristics/objectives and which invest in environmental sustainable investments to disclose (i) the environmental objectives under the Taxonomy Regulation (the **Taxonomy**) to which the fund's investments contribute and (ii) how and to what extent the fund's investments comply with the Taxonomy criteria for environmentally sustainable investments i.e., the level of Taxonomy-aligned sustainable investments in the fund's portfolio (the **Taxonomy-related SFDR rules**).

Supervisory expectations for compliance with Taxonomy-related SFDR rules

The Central Bank Statement confirms:

- draft SFDR Level 2 measures should be used as a reference point for applying the SFDR in the period until those measures are finalised and in effect on the anticipated date of 1 January 2023. Our briefing on the draft SFDR Level 2 measures is available [here](#)
- the supervisory expectations set out in the ESA Statement including that an 'explicit quantification' of Taxonomy-aligned investments in a fund's portfolio be included in fund offering documents to address the Taxonomy-related SFDR rules and that, while estimates should not be used to calculate Taxonomy-alignment, where information is not readily available from investee companies' public disclosures, reliance may be placed on equivalent information on Taxonomy-alignment obtained directly from investee companies or from third party providers

Next steps

Following the publication of the Central Bank Statement and the ESA Statement, and until SFDR Level 2 comes into effect, in-scope UCITS managers and AIFMs should refer to the draft Level 2 measures when applying relevant SFDR disclosure rules, including the Taxonomy-related SFDR rules.

ESA seek clarity of PRIIPs KID notification rules for UCITS

On 29 April 2022, the European Supervisory Authorities (the **ESA**) published recommended revisions to the PRIIPs Regulation which were submitted to the Commission in connection with its review of the PRIIPs regime.

As per previous briefings (see [here](#)), UCITS will first become subject to the PRIIPs regime following the end of the PRIIPs transition period for UCITS on 1 January 2023. From that date, UCITS will be obliged to prepare and provide a PRIIPs Key Information Document (**KID**), in place of the UCITS KIID, to all EEA-based retail investors. In respect of professional investors and non-EEA retail investors, UCITS may opt to produce either a PRIIPs KID or a UCITS KIID. UCITS managers' assessment in this regard should, where relevant, take account of UK rules which, until 31 December 2026, require UCITS marketed to UK retail investors to produce a UCITS KIID.

While the ESA have recommended a wide range of amendments to the current PRIIPs regime, it is not expected that these amendments will be finalised ahead of the application of the PRIIPs regime to UCITS from 1 January 2023. See [here](#) for further details of the PRIIPs regime which will apply to UCITS from next January.

NCA Notification of PRIIPs KID by UCITS

As part of their PRIIPs recommendations, the ESA have sought clarity from the Commission on certain aspects of the regime in light of its upcoming application to UCITS. Specifically, the ESA note that it is not currently clear how the regulatory notification of PRIIPs KIDs will apply post January 2023, given the divergence between PRIIPs and UCITS KIID notification rules.

PRIIPs NCA notification requirements

Under the PRIIPs regime, Member States have the option to require ex-ante notification of the PRIIPs KID to the host NCA in the Member State in which the PRIIPs is marketed. The ESA note that there are divergent uses of this facility across the EU; eight Member States (Belgium, Finland, France, Italy, Latvia, Portugal, Slovenia and Spain) require ex-ante notification either (i) for certain PRIIPs, (ii) for all PRIIPs, (iii) in the case of significant KID updates, (iv) along with additional marketing materials or (v) for review before the product is made available. In addition, some NCAs only require an ex-post notification to facilitate a risk-based review of KIDs. While the Central Bank has yet to publish its PRIIPs KID filing requirements for UCITS, the published filing rules for AIFs reference ex-post notification of new and amended PRIIPs KIDs.

To address the lack of convergence between Member States' PRIIPs KID notification rules, the ESA "consider that a broader use of the ex-ante notification [although not for review or approval] option would have material benefits."

UCITS NCA notification requirements

UCITS KIID rules currently require UCITS managers to file the UCITS KIID with the UCITS' home NCA.

The Central Bank requires new UCITS KIIDs to be submitted prior to the approval of a new sub-fund. In the event of any subsequent amendments, including as part of the annual KIID update (which is not a feature of the PRIIPs regime), the UCITS KIID is required to be filed along with the necessary confirmations from the UCITS manager as to the KIID's compliance with applicable rules and regulatory guidelines.

NCA notification of PRIIPs KID by UCITS

The ESA have sought clarity from the Commission as to whether, post 1 January 2023, UCITS are required to file the PRIIPs KID with NCAs in the same way as UCITS KIIDs are required to be filed. The ESA see two possible applications of the PRIIPs KID notification requirement post 1 January 2023:

1. UCITS managers need to send the PRIIPs KID (instead of the UCITS KIID) to the home NCA as per existing UCITS KIID rules; or
2. where UCITS KIID rules no longer apply, UCITS managers would not need to send their PRIIPs KID to any NCA, except in those Member States where the ex-ante notification option, allowed by the PRIIPs Regulation, has been implemented. And in that case, the notification would need to be made to the host NCA of the Member States where UCITS is to be marketed.

A response from the Commission to the ESA request for clarity is now awaited.

Additional PRIIPs regime amendments recommended by the ESA

In addition, the ESA recommend:

- clarifying the 'made available' concept under the PRIIPs regime which would clarify the circumstances under which a PRIIP manufacturer is required to draw up and publish a PRIIPs KID on its website and distinguish between the responsibilities of PRIIPs manufacturers and distributors.
- including past performance in the PRIIPs KID (as opposed to the current rule for past performance to be published on a website linked in the KID) for UCITS and other relevant PRIIPs.
- aligning PRIIPs investor notification rules with the current UCITS rules. Currently, PRIIPs KIDs are, in the case of successive transactions in the same PRIIP, to be provided before the first transaction and at the time of the first transaction (where the term 'transaction' is interpreted to include a decision to remain in the UCITS) after the PRIIPs KID has been amended. UCITS KIIDs are, however, required under UCITS rules to be provided before the first transaction and if an investor makes changes e.g., additional subscriptions. The PRIIPs rules therefore require additional investor notification of the PRIIPs KID over and above the UCITS rules as investors which maintain an investment in a UCITS would need to be provided with any amended PRIIPs KID irrespective of whether the investor has instigated a transaction with the UCITS.
- including a new section in the PRIIPs KID to show prominently where, in line with SFDR, a PRIIP has sustainable investment as its objective, or it promotes environmental or social characteristics.
- including provisions to facilitate the digitalisation of the PRIIPs KID, to improve the effectiveness of sanctions under the PRIIPs regime and to clarify the scope of the PRIIPs regime.

Next Steps

The Commission will now consider the ESA's recommendations for amendments to the PRIIPs regime, including the ESA's request for clarification of the regime ahead of its application to UCITS on 1 January 2023.

SFDR Level 2 set to be revised in 2023

On 8 April 2022, ESMA published a request received from the Commission for advice on amending the (yet to be finalised and enter into effect) SFDR Level 2 measures. Draft SFDR Level 2 measures were adopted by the Commission on 6 April 2022 and are scheduled to take effect on 1 January 2023. However, the Commission has already asked the European Supervisory Authorities (the **ESA**) to recommend amendments to the draft SFDR Level 2 measures to take account of:

1. the inclusion of nuclear and fossil fuel gas activities in the Taxonomy technical screening criteria for climate-related activities.

On 9 March 2022, the Commission adopted a Taxonomy Complementary Climate Delegated Act on climate change mitigation and adaptation covering gas and nuclear activities. As a result, the Commission intends amending SFDR Level 2 to require funds in scope of Articles 8 or 9 to make disclosures about their investments in fossil gas and nuclear energy activities

2. a review of the principal adverse impact indicators (the **PAIs**) and product-level SFDR disclosures which the Commission has invited the ESA to undertake.

In this regard, the Commission has requested the ESA to:

- a. *'streamline and develop further the regulatory framework'*
- b. *consider extending the lists of universal indicators for PAIs*
- c. *refine the content of all the indicators for adverse impacts and their respective definitions, applicable methodologies, metrics and presentation'*
- d. *propose amendments regarding decarbonisation targets and consider whether products making Taxonomy-aligned investments sufficiently address the disclosure and information on Taxonomy-aligned activities.'*

Next Steps

The ESA are requested to submit advice in respect of (1) above by 30 September 2022 and in respect of (2) above by 28 April 2023. On receipt of the ESA's advice, the Commission intends to make amendments to the currently drafted SFDR Level 2 measures. While no specific timeline for such amendments has been published, the Commission's request to the ESA confirms the '*particular urgency*' of such amendments and requests the ESA to use expedited processes to provide the requested advice. As such, it can be anticipated that the amendments will be progressed promptly on receipt by the Commission of the ESA advice and in all likelihood in the course of 2023.

New Retail Investor Regulation Proposed

On 3 May 2022, the Commission published a CMU-related call for evidence on measures to increase retail investment in the EU. This follows on from the publication of the Commission's Retail Investment Strategy in April last year and the subsequent industry consultation which focussed on:

1. comparability issues due different disclosure regimes applying to similar retail products
2. inducements
3. financial literacy
4. digitalisation

5. sustainable investing

The Commission call for evidence requests feedback on the following preliminary options for addressing the very low levels of retail participation in EU capital markets:

- implement '*targeted modifications*' to adapt rules for the digitalisation of the retail investment sector and streamline and ensure consistency across existing sectoral rules (MiFID, PRIIPs, IDD, PEPP, UCITS, AIFMD and Solvency II)
- implement '*a more substantial overhaul of the existing rules*' such as the suitability and appropriateness assessments
- non-legislative measures to enhance disclosures on the basis of Level 1 rules and promote further supervisory convergence across Member States

In terms of impact of the above options, the Commission notes that '*The introduction of new or better tailored rules orientated towards protection of investors is likely to increase administrative burdens on investment services providers and intermediaries. These impacts may be either temporarily or partially offset through the introduction of more streamlined and consistent rules across different sectoral legislation, as well as initiatives to adapt legislation to a digital environment (e.g., scrapping requirement for paper)*'.

Next Steps

Responses to the Commission call for evidence can be submitted up until 31 May 2022. Respondents' feedback will be used to inform a Retail Investment Strategy impact assessment which is scheduled to be finalised by the Commission in September 2022.

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