



Asset Management & Investment Funds Update

April 2022

ESA Update of SFDR Supervisory Statement

On 24 March 2022, the ESAs issued an updated version of the February 2021 supervisory statement on SFDR with additional guidance for industry and NCAs on the implementation of the SFDR Taxonomy-related provisions in the interim period prior to SFDR Level 2 taking effect on the anticipated date of 1 January 2023 (the **Supervisory Statement**).

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.

Requirement for numerical disclosure of Taxonomy alignment

The Supervisory Statement confirms the previously indicated supervisory expectation that compliance with the requirement at (ii) above necessitates disclosure of an explicit quantification, using a numerical percentage, of the level of investment in Taxonomy-aligned investments. This percentage disclosure may, until January 2023, (expected effective date of SFDR Level 2) be supplemented by qualitative disclosures explaining how the level was calculated e.g., by identifying the data sources used. However, any qualitative disclosures should not go beyond what is required under the SFDR Taxonomy-related rules.

Disclosure of Taxonomy-eligibility not sufficient

The Supervisory Statement also confirms the supervisory expectation that information on Taxonomy-eligible activities should not be disclosed to meet the requirement to disclose the level of Taxonomy-aligned investments in a fund's portfolio. The necessity for this clarification arises from the phased implementation of Taxonomy disclosure obligations for investee companies, which will provide essential data for funds' calculation of the Taxonomy alignment of investments in such companies. Under this phased implementation approach, investee companies must only disclose the eligibility of activities under the Taxonomy i.e., whether activities are covered by the Taxonomy, from January 2022 with the first reports on the Taxonomy alignment of investee companies' activities not due until 1 January 2023. The phase-in of Taxonomy disclosure obligations for investee companies creates a significant and challenging data gap for funds which invest in such companies and the question arose as to whether funds, on terms similar to the phase-in of Taxonomy obligations for investee companies, may also comply with their Taxonomy-alignment disclosure obligations using the Taxonomy eligibility data published by investee companies in the period to January 2023. The Supervisory Statement clarifies that this is not permitted. The Supervisory Statement further clarifies that

estimates should not be used to calculate the level of Taxonomy-aligned investments in a fund's portfolio. However, where data is not available from public disclosures issued by investee companies (which would only be available on a voluntary basis given the above phase-in of investee companies' Taxonomy disclosure obligation), fund managers may use equivalent information obtained direct from investee companies or from third party data providers.

Next steps

Similar to the February 2021 statement, the recent Supervisory Statement encourages NCAs to refer fund managers to the draft SFDR Level 2 measures when applying SFDR, noting that SFDR Level 2 can be used as a reference for applying the SFDR in the interim period prior to its anticipated entry into effect in January next year.

WILLIAM FRY

DUBLIN | CORK | LONDON | NEW YORK | SAN FRANCISCO | SILICON VALLEY

William Fry LLP | T: +353 1 639 5000 | E: info@williamfry.com

williamfry.com

This briefing is provided for information only and does not constitute legal advice