









Asset Management & Investment Funds Update






November 2022






Key Dates & Deadlines: Q4 2022 & January 2023

Date	Source	Summary	Action/Impact
31 October		<p>SFDR – Level 2 revisions</p> <p>Commission adopts Level 2 amendments, including amended Level 2 disclosure templates requiring disclosure of any investment in Taxonomy-aligned fossil gas and nuclear energy activities. See article on topic in this month's update.</p>	Fund managers of Article 8 and 9 funds to consider using the amended disclosure templates in anticipation of their finalisation ahead of the 1 January 2023 Level 2 compliance deadline.
9 November		<p>Corporate Sustainability Reporting Directive (CSRD)</p> <p>CSRD is expected to be formally adopted by the Parliament and thereafter by the Council, following which it will be published and enter into force 20 days following publication. CSRD will first take effect for companies subject to the NFRD from 1 January 2024 (using 2023 data). Detailed reporting standards are expected to be published by EFRAG in November 2022. See here for further details.</p>	Fund managers should consider the scope and impact of being subject to the extensive sustainability reporting standards under CSRD. CSRD is intended to align with SFDR and the EU Taxonomy but will represent a not insignificant additional reporting obligation for in-scope companies.
11 November		<p>AML - beneficial ownership</p> <p>ICAVs, ILPs, CCFs and unit trusts (CFVs) must begin filing beneficial owners' identity verification details (PPSN or CBI reference number) with the Central Bank as Registrar of the Register of Beneficial</p>	From 11 November, CFVs are required to file beneficial owners' PPSNs or, failing that, their CBI reference numbers (issued as part of PCF approval process) using the Central Bank's revised beneficial ownership template which will be

		<p>Ownership of CFVs. Existing CFVs must arrange to file beneficial owners' identity details by 7 December 2022. See article on topic in this month's update.</p>	<p>made available from this date. For those beneficial owners without a PPSN/CBI reference number, a verification of identity process is available to obtain a CBI reference number. Existing CFVs have until 7 December 2022 to file beneficial owners' identity details.</p>
1 December		<p>SFDR Level 2 – Central Bank fast-track process</p> <p>Filing deadline for Article 8 and 9 funds' pre-contractual disclosures required under SFDR Level 2 rules. See here for further details.</p>	<p>Fund managers of Article 8 and 9 funds must update offering documents to take account of the Level 2 rules, including the requirement to publish the relevant pre-contractual template annexed to Level 2, and prepare to file updated documents with the Central Bank in accordance with published guidance for the regulatory fast-track process for noting such documents.</p>
7 December		<p>AML - beneficial ownership</p> <p>Central Bank deadline for existing CFVs to complete filing of beneficial owners' PPSNs/CBI reference numbers (whether obtained during the PCF approval process or via the Central Bank's verification of identity process). See article on topic in this month's update.</p>	<p>Existing CFVs must arrange to file beneficial owners' identity details using the latest version of the Central Bank's beneficial ownership template and in accordance with the relevant regulatory guidance for amending beneficial ownership details on the Register.</p>
27 December		<p>GDPR – new third country SCCs</p> <p>A new version of the standard contractual clauses (SCCs) for the transfer of personal data outside of the EEA was published in June 2021, with the previous version repealed from 27 September 2021. Organisations have until 27 December 2022 to transition existing sets of the 'old' SCCs over to the 'new' SCCs, after which date the 'old' SCCs will no longer be deemed to provide appropriate safeguards. See here for further details.</p>	<p>Fund managers should advance reviews of existing sets of 'old' SCCs to identify those which need to transition to the new SCCs.</p>
30 December		<p>SFDR – fund PAI disclosures</p> <p>SFDR compliance deadline for pre-contractual disclosure of any fund-level consideration of principal adverse impacts (PAIs) including whether and how PAIs are assessed at fund level and confirmation that fund annual reports contain reporting on any identified PAIs. See here for further details.</p>	<p>Fund managers should consider/address fund PAI disclosure ahead of the deadline, noting such disclosures can be included in the Central Bank's fast-track process for the year-end SFDR Level 2 compliance deadline.</p>
31 December		<p>SFDR – PAI reporting (assessment date)</p> <p>Fourth and final calculation date for the 2022 assessment of the PAIs of investment decisions under SFDR</p>	<p>Fund managers should consider/address how relevant data is to be captured given that the first PAI reference period applies during 2022 for PAI Reporting by 30 June 2023.</p>

		Article 4(1)(a), (3) or (4). See here for further details.	
31 December		COVID-19 – flexibility measures Interim company law flexibility measures introduced under the Companies (Miscellaneous Provisions) (COVID-19) Act 2020 expire. See here for further details.	Fund managers utilising the flexibility measures to take note of the current expiration date.
31 December		PRIPs – for UCITS Following several extensions, the PRIIPs transitional period for UCITS comes to an end on 31 December 2022 and from 1 January 2023 UCITS made available (sold) to EEA retail investors must publish a PRIIPs KID. See here for further details.	UCITS fund managers should advance preparations for the PRIIPs compliance deadline from when UCITS must produce: <ul style="list-style-type: none"> • a PRIIPs KID for EEA-based retail investors • either a PRIIPs KID or UCITS KIID for professional investors and non-EEA based retail investors • a UCITS KIID for any UK investors (under UK UCITS KIID rules).
31 December		Outsourcing – ESMA Cloud Outsourcing Guidelines End of transitional period for compliance of existing cloud outsourcing arrangements with the ESMA Cloud Outsourcing Guidelines (effective for new arrangements since July 2021) which set out guidance for the governance and risk management of cloud service provider arrangements. The Central Bank Cross-Industry Guidance on Outsourcing, issued with immediate effect on 17 December 2021, incorporates the ESMA Cloud Outsourcing Guidelines. See here for further details.	Fund managers should consider/address compliance of existing arrangements with the Cloud Outsourcing Guidelines, whether as part of work programmes implementing the Central Bank Cross-Industry Guidance on Outsourcing or separately, but in any event prior to the end of the transitional period for compliance of existing arrangements with the Guidelines. Firms are required to notify their competent authority if the review of existing cloud outsourcing arrangements of critical or important functions is not finalised by 31 December 2022 and confirm the measures planned to complete the review or the possible exit strategy.
1 January 2023		Whistleblowing Commencement of new whistleblowing measures under the Protected Disclosures (Amendment) Act 2022 which provides for the protection of whistleblowers and includes requirements for employers to establish internal reporting channels to facilitate whistleblowers. See here for further details.	Corporate funds and fund management companies must establish, or update existing, internal reporting processes and procedures ahead of the 1 January deadline.
1 January 2023		Performance fees – multi-manager funds Central Bank deadline for multi-manager UCITS' and RIAIFs' compliance with ESMA Q&A on performance fees which precludes the payment of performance fees to	Impacted fund managers should advance preparations to transition existing performance fee structures into compliance with the terms of ESMA UCITS Q&A (Section XI, Q&A 5) and ensure any necessary amendments to performance fee disclosures in offering documents are

		individual managers if overall the fund has underperformed. See here for further details.	finalised ahead of the 1 January 2023 deadline.
1 January 2023		<p>SFDR Level 2 - effective date</p> <p>SFDR Level 2 sets out additional disclosure obligations in respect of:</p> <ul style="list-style-type: none"> fund managers' disclosure of the PAIs of its investment decisions on sustainability factors under SFDR Article 4 fund disclosures of environmental or social (E/S) characteristics under SFDR Articles 8, 10 and 11 fund disclosures of sustainable investment objectives under SFDR Articles 9, 10 and 11 <p>See here for further details.</p>	Funds using the Central Bank's fast-track process for noting Level 2 pre-contractual disclosures are subject to the filing deadline for that process of 1 December 2022. In addition to the pre-contractual disclosures, Level 2 includes website and financial report disclosures of funds' E/S characteristics or sustainable investment objectives. Website disclosures are required for in-scope funds from 1 January 2023 noting that such disclosures are not subject to a template but must be made in accordance with relevant Level 2 provisions. In-scope funds' Level 2 financial report disclosures must be included in reports published after 1 January 2023 (irrespective of the finance year under report).
1 January 2023		<p>PRIIPs for UCITS</p> <p>UCITS are subject to the PRIIPs regime. 1 January 2023 is also the effective date of provisions under the Irish UCITS Regulations allowing UCITS to prepare a PRIIPs KID in satisfaction of UCITS KIID rules. These provisions allow both UCITS in scope of the PRIIPs rules and UCITS not in scope to publish a PRIIPs KID in place of the UCITS KIID from 1 January 2023.</p>	UCITS managers publishing PRIIPs KIDs, whether on a voluntary or mandatory basis, to progress compliance preparations ahead of the 1 January 2023 switch over from UCITS KIIDs to PRIIPs KIDs.
2023 (date dependent on publication date of relevant financial report)		<p>SFDR Level 2 – fund annual report disclosures</p> <p>SFDR Level 2 financial report disclosure rules take effect from 1 January 2023 and must be addressed in annual reports published after this date irrespective of the relevant financial or reference period. See here for further details.</p>	Fund managers must ensure annual financial statements published after 1 January 2023 for funds subject to SFDR Article 8 or 9 incorporate the relevant SFDR Level 2 disclosure template, completed in accordance with Chapter V, SFDR Level 2.

FCA consults on UK version of EU SFDR

On 26 October 2022, the UK's FCA published its proposal for a sustainability disclosures regime, incorporating sustainable product labels (**UK SDR**). The proposals are under consultation until 25 January 2023 and final rules are expected by end-June 2023 with a proposed effective date (for most of the rules) of end-June 2024.

UK SDR will not, initially, apply to EU funds marketed in the UK

The UK SDR will not initially apply to non-UK funds marketed in the UK (overseas funds). However, this remains under review and the UK SDR consultation notes the FCA's intention to issue a further consultation on sustainability disclosure rules for overseas funds in due course.

While the exclusion of overseas funds from the first wave of the UK SDR is certainly welcome, cross-border managers of both EU and UK funds must now begin the difficult task of planning for compliance with two detailed and complex sustainability-related disclosures regimes under the EU's sustainable finance disclosures regulation (**SFDR**) and the proposed UK SDR, and potentially a third following the US SEC's climate disclosure proposal. And while the consultation paper repeatedly references the efforts made to avoid burdening those cross-border managers already subject to SFDR and potentially subject to the SEC's proposed disclosure rules, such managers would be forgiven any perturbation at the timing of the proposal's publication mere weeks prior to the deadline for compliance with the prescriptive Level 2 measures underpinning SFDR.

Below is a summary of key elements of the proposed UK SDR, how it is likely to interact with SFDR and how cross-border managers subject to both regimes may be able to leverage SFDR compliance work to avail of the sustainable fund labels and comply with the proposed disclosure rules under the UK SDR.

Sustainable fund labels – available from June 2024

SFDR is a disclosures regime for the EU financial services sector which, along with the EU Taxonomy (EU environmental performance standard) and the soon-to-be finalised Corporate Sustainability Reporting Directive, are the core measures under the EU sustainable finance strategy. Despite the disclosure focus of SFDR, however, many in-scope funds are marketed using the relevant SFDR article to which they are subject (i.e., Article 8 or 9 funds). Even though the sustainability-related amendments to the MiFID regime provide for three categories of sustainable products; sustainable investment products, Taxonomy-aligned products and PAI products. ESMA has however, been vocal in its concern for retail investors which may view any "Article 8 disclosure as an indication [per se] of sustainability." and has committed to working with NCAs to "reduce what one might call 'over-disclosure by investment funds under Article 8". ESMA has also publicly supported the "legislative efforts to create clear criteria for [funds] making sustainability disclosures" which could include introducing sustainability labels for funds.

Perhaps with the benefit of the EU's experience, the UK SDR incorporates sustainable fund labels and for the same investor protection reasons cited by ESMA in support of their adoption in the EU earlier this year.

The FCA proposes three sustainable labels, for use by both retail and institutional funds, along with qualifying criteria for each. Notably, for managers of both UK and EU funds, the proposed qualifying criteria are high-level and principles-based (although the consultation references the FCA's intention to adopt stricter criteria in the future). This should allow managers considerable discretion, and the possibility to leverage SFDR compliance work, in the selection of appropriate environmental and social standards and the determination of performance necessary to qualify for one of the labels.

1. *sustainable focus label* – for funds that invest at least 70% in environmentally and/or socially sustainable assets. As the UK's proposed Green Taxonomy has not yet been developed, the sustainable standard for investments is somewhat vaguely stated referencing what 'a reasonable investor would regard [as sustainable]' and meeting a 'credible standard of [sustainability]' being one that is 'robust, independently assessed, evidence-based and transparent'. The lack of specificity, however, is likely to benefit those cross-border managers which have already established a methodology for assessing sustainable investments in accordance with the SFDR.
2. *sustainable improvers label* - for funds that invest to measurably improve environmental and/ social sustainability of its assets over time using stewardship activities (including escalation and potential divestment strategies). Unlike SFDR, the Level 2 measures for which set down detailed impact KPIs for measuring sustainability impacts, the proposal does not prescribe the KPIs to be used to measure investments' sustainable improvements. The FCA notes that outputs of the UK's Transition Plan Taskforce may provide metrics which could be used by funds with this label. Again, the lack of prescription in the proposals is likely to benefit those managers which have already, or are planning to, implement the SFDR KPIs in compliance with the SFDR disclosure rules for the consideration of investments' principal adverse impacts on sustainability factors. Use of EU Climate Benchmarks, that focus on companies' decarbonisation trajectories, may also be useful in this regard.
3. *sustainable impact label* - for funds that invest with the explicit objective of achieving a positive, measurable contribution to sustainable outcomes. Such funds will be invested in solutions to environmental or social problems, often in undeserved markets or to address observed market failures. As the label references the application of 'industry standard approaches to performance

measurement', managers already utilising the EU Taxonomy for allocating assets to environmentally sustainable activities may be able to continue rely on its use of the Taxonomy to avail of this label.

Disclosure rules – first applicable from June 2024

The UK SDR proposal includes product and entity-level disclosure requirements.

Product-level disclosure rules

The product-level requirements, which require 'many of the same disclosure items as required under' SFDR, would apply to two types of funds:

- (i) funds with sustainability features – these funds would be required to make consumer-facing website (or other relevant digital medium) disclosures. The disclosures would be in the form of a stand-alone document, published alongside other relevant key investor information and setting out summary details of the sustainability features of the fund. The disclosures are not dissimilar to the website disclosures required under SFDR for funds in scope of Articles 8 and 9.
- (ii) funds which use a sustainable label and funds 'that do not use a label but which have sustainability-related features that are integral to their investment strategy (i.e. where the product has specific sustainability features and the first has specific policies and procedures in plan in relation to those features' – in addition to the disclosures at (i) above, these funds would be required to make detailed pre-contractual and website disclosure of sustainability-related performance, via a sustainability product report and using appropriate KPIs.

Entity-level disclosure rules

Entity-level disclosure rules would apply to firms with \geq £5 billion AUM and require website disclosures on sustainability risks and opportunities, building on the existing requirement for climate change TCFD-aligned disclosures and using the TCFD pillars of governance, strategy, risk management and metrics and targets. The FCA proposes a staged implementation for the entity-level disclosure rules with the largest firms (\geq £50 billion AUM) disclosing first, from June 2025, and the remainder (excluding firms with $<$ £5 billion AUM) disclosing from June 2026. Provided firms confirm compliance with the UK SDR rules, firms can make the entity-level disclosures in a group/affiliate report that includes SFDR entity-level disclosures.

Naming and marketing rules – applicable from June 2023

The UK SDR proposal also includes a general 'anti-greenwashing' rule which clarifies that sustainability-related communications are equally subject to the existing rules for fair, clear and not misleading investor communications. The proposed naming rules would restrict the use of certain sustainability-related terms in fund names and marketing materials of funds without a sustainable label; prohibited terms include 'ESG' (or 'environmental', 'social' or 'governance'), 'climate', 'impact', 'sustainable' or 'sustainability', 'responsible', 'green', 'SDG' (sustainable development goals), 'Paris-aligned' or 'net zero'.

Distributor rules

Distributors, including investment platforms, would be required to make label and disclosure rules available to retail investors. While financial advisers will be in scope of the UK SDR, the consultation notes that the rules applicable to this sector will be addressed in a further consultation. Notably and while overseas funds will not initially be in scope of the UK SDR, it is proposed that distributors of overseas funds (including ETFs) warn retail investors where those funds use prohibited sustainability-related terms by way of a prominent website notice stating, 'This product is based overseas and is not subject to FCA sustainable investment labelling and disclosure requirements.' along with a link to the UK SDR including labelling rules on the FCA's website.

Next steps

Despite the extensive proposals set out in the consultation paper (running to almost 200 pages), the FCA already has plans to build out the UK SDR to cover several additional areas including overseas funds, financial advisers, listed issuers, transition plan disclosures, UK Taxonomy-related disclosures, sustainability-related metrics, and entity-level disclosures.

As noted by the FCA on more than one occasion in the consultation, the proposals are and must be calibrated for the UK market. However, those in-scope managers that have been grappling with SFDR compliance for the last three years would be forgiven any perturbation at the timing of the proposal's publication mere weeks prior to the SFDR Level 2 compliance deadline.

December deadline fixed for filing beneficial owners' details

In its October 2022 beneficial ownership update, the Central Bank confirmed that it will commence collecting PPS numbers (**PPSNs**) for beneficial owners of certain financial vehicles including ICAVs, unit trusts, CCFs and ILPs (**CFVs**) from 11 November 2022. From this date, an updated Beneficial Ownership Template (**BO Template**) will be made available on the Central Bank's online reporting system (**ONR**) to provide for the submission of beneficial owners' PPSNs.

Existing CFVs must arrange to file the updated BO Template by 7 December 2022, in compliance with their obligation to record beneficial owners' PPSNs on the Central Bank's Register of Beneficial Ownership of CFVs. Where a beneficial owner does not have a PPSN, the CBI reference number obtained as part of a PCF approval process may be recorded in the ONR template.

As per previous updates (see [here](#)), a verification of identity (**VOI**) process is available for beneficial owners of CFVs which have neither a PPSN nor a CBI reference number. The VOI process, through which beneficial owners are assigned a CBI reference number, is now available along with relevant [guidance](#) on submitting the necessary VOI return on the ONR.

Next steps

In its recent update, the Central Bank confirms that CFVs:

- should continue to file their beneficial ownership details/changes as required using the current BO Template;
- are requested not to file beneficial owner returns on Thursday 10 November 2022 to allow the Central Bank transition from the current to the updated BO Template;
- should notify their beneficial owners who do not hold a PPSN or have not previously been approved in a PCF role, to engage with the VOI process to obtain a CBI reference number in advance of the 7 December 2022 filing deadline;
- must file their beneficial ownership details using the updated BO Template from 11 November 2022, and
- have until 7 December 2022 to file the updated BO Template.

Amendments made to SFDR Level 2 Templates

On 31 October 2022, proposed amendments to the SFDR delegated regulation (**Level 2**), which is due to take effect on 1 January 2023, were adopted by the Commission. The Level 2 amendments, which introduce additional pre-contractual, financial report and website disclosure obligations for Article 8 and 9 funds in respect of any Taxonomy compliant investments, must now pass scrutiny by the Parliament and Council. If no objections are raised as part of that process, the Level 2 amendments will be published and take effect three days thereafter.

Additional Taxonomy-related Level 2 disclosures

The additional Taxonomy-related Level 2 disclosures were deemed necessary following the extension of the Taxonomy to include technical screening criteria for assessing gas and nuclear as transitional activities under the Taxonomy. This extension of the Taxonomy was finalised in March this year and is scheduled to take effect from 1 January 2023.

As a result of the Taxonomy extension, investments in gas and nuclear activities can now qualify as Taxonomy-aligned investments, subject to satisfying the relevant Taxonomy technical screening criteria, and be disclosed as such in accordance with the Level 2 Taxonomy disclosure obligations of SFDR Article 8 and 9 funds.

To ensure investors are aware of the extent to which any Taxonomy-aligned investments disclosed by Article 8 and 9 funds are in gas and/or nuclear activities, the Commission has adopted amendments to the Level 2 pre-contractual and financial report templates for Article 8 and 9 funds to require a breakdown of such investments highlighting (i) the proportion in Taxonomy-aligned gas activities, (ii) the proportion in Taxonomy-aligned nuclear activities and (iii) the proportion in non-gas/nuclear Taxonomy-aligned activities.

As the effective dates of the Taxonomy extension and SFDR Level 2 rules are already aligned, EU legislators are expected to also target a 1 January 2023 effective date for the Level 2 amendments such that required

Level 2 Taxonomy-related disclosures of Article 8 and 9 funds identify any exposure to gas and nuclear-related activities that comply with the Taxonomy as transitional activities.

Impact of the Level 2 amendments

Article 8 and 9 funds with Taxonomy-aligned investments in gas and nuclear-related activities will, of course, be the most affected by the Level 2 amendments once finalised. However, the number of Article 8 and 9 funds disclosing Taxonomy-aligned investments is expected to be limited, at least in the initial period post the Level 2 effective date of 1 January next. For the majority of fund managers, therefore, the Level 2 amendments are most likely to present an administrative challenge, in particular, if the current Level 2 disclosures templates are updated in advance of the 1 January 2023 compliance deadline.

Next steps

The Level 2 amendments, following their adoption by the Commission on 31 October 2022, must now be scrutinised by the Parliament and Council. If no objection is raised as part of that process, the amendments will be published in the Official Journal and enter into effect three days later. As set out above, EU legislators are expected to target a 1 January 2023 effective date for the Level 2 amendments.

IOSCO surveys index providers and users

On 13 October 2022, IOSCO published a survey, directed at asset managers and index providers, seeking information on their interactions to inform further work on 'conduct-related index provider matters'.

The survey, comprising separate parts for those in the asset management sector and index providers, is intended to inform further analysis of:

- (i) the role of asset managers in relation to indices and index providers and the role and processes of index providers in the provision of indices
- (ii) the potential impact of administrative errors on investment funds and
- (iii) potential conflicts of interest that may exist at the index provider in relation to the fund.

The survey questions for asset managers focus on the costs associated with using a particular index and disclosure of same to investors, initial and ongoing index due diligence processes, use of bespoke benchmarks, governance arrangements for responding to regular and exceptional market events, management of index calculation errors, conflicts of interest management and use of non-core services or functions provided by index providers.

The survey questions for index providers focus on the confidentiality provisions imposed on index users, governance arrangements for responding to regular and exceptional market events, management of index calculation errors, conflicts of interest management and the provision of any non-core services and functions such as any ESG screening services.

Next steps

The submission deadline for survey responses is 26 November 2022.
