

CSSF Updates SFDR FAQ

On 13 March 2023, Luxembourg's financial regulator, the Commission de Surveillance du Secteur Financier (the "CSSF"), issued an updated FAQ¹ on Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial sector ("SFDR")².

Background

SFDR prescribes mandatory disclosures to be made by financial advisers and financial market participants ("FMPs") relating to, inter alia, the integration of environmental, social and governance ("ESG") factors into investment and risk management processes. On 2 December 2022, the CSSF issued the first iteration of its FAQ in order to provide further clarity on certain aspects of the SFDR.

Updated FAQ

The updated FAQ includes three new questions and answers on:

- the use of ESG and/or sustainability related terminology in fund names (question 7);
- the methodology used to define sustainable investments (question 8); and
- efficient portfolio management ("EPM") techniques (question 9).

a) *Use of ESG and/or Sustainability Related Terminology in Fund Names*

The focus of this new question 7 is to remind FMPs, whether they are disclosing under articles

6, 8 or 9 of the SFDR, of the CSSF's expectations in respect of fund names, i.e. fund names should not be misleading and must align with the relevant fund's investment objective and policy, as well as the applicable principles-based guidance on fund names set out in the ESMA supervisory briefing on sustainability risks and disclosures in the area of investment management³ ("Supervisory Briefing").

The Supervisory Briefing clarifies that terms such as "ESG", "green", "sustainable", "social", "ethical", "impact" or any other ESG-related terms should only be used when supported in a material way by evidence of sustainability characteristics, themes or objectives described in the relevant fund documentation.

b) *Methodology Used to Define Sustainable Investments*

The CSSF clarified in this new question 8 that FMPs should make available to all investors the methodology used to determine whether an investment is considered a "sustainable investment" within the meaning of article 2(17) of the SFDR, as well as any thresholds used in this context, e.g. the threshold used when applying a pass-fail approach.

This information may be made available to investors in the mandatory disclosure templates, the prospectus / private placement memorandum of the relevant fund and / or the website disclosures.

¹ https://www.cssf.lu/wp-content/uploads/FAQ_SFDR.pdf

² <https://eur-lex.europa.eu/eli/reg/2019/2088/oj>

³ https://www.esma.europa.eu/sites/default/files/library/esma34-45-1427_supervisory_briefing_on_sustainability_risks_and_disclosures.pdf

c) *EPM Techniques*

In accordance with Commission Delegated Regulation (EU) of 2022/1288 of 6 April 2022 supplementing SFDR⁴, the portfolio of an article 9 fund may also include investments or techniques used for hedging purposes or relating to cash as ancillary liquidity, provided that those are in line with the sustainable investment objective of the relevant fund.

In this context, the CSSF confirmed that (i) when used for hedging purposes, EPM techniques fall within the "remaining portion" of the portfolio of article 9 funds and (ii) FMPs are responsible for assessing the purpose of any EPM techniques used and whether these fall within the "remaining portion" of the portfolio of article 9 funds.

If you would like further information, please liaise with the below or your usual Maples Group contact.

Luxembourg

Johan Terblanche

+352 28 55 12 44

johan.terblanche@maples.com

Michelle Barry

+352 28 55 12 47

michelle.barry@maples.com

Manfred Dietrich

+352 28 55 12 10

manfred.dietrich@maples.com

Jennifer Burr

+ 352 28 55 12 68

jennifer.burr@maples.com

Donnchadh McCarthy

+352 28 55 12 22

donnchadh.mccarthy@maples.com

Quentin Goffioul

+352 28 55 12 29

quentin.goffioul@maples.com

March 2023

© MAPLES GROUP

This update is intended to provide only general information for the clients and professional contacts of the Maples Group. It does not purport to be comprehensive or to render legal advice.

In Luxembourg, the Maples Group provides full service legal advice through our independent law firm, Maples and Calder (Luxembourg) SARL, which is registered with the Luxembourg Bar.

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02022R1288-20220725>