

# Data Collection Exercise by CSSF under SFDR

5 April 2023

On 24 March 2023, the Luxembourg financial regulator, *the Commission de Surveillance du Secteur Financier* (the “CSSF”), published a [communication](#) (the “Communication”) relating to a data collection exercise (the “Data Collection Exercise”) that requires Luxembourg fully authorized fund managers that manage Luxembourg-regulated and unregulated funds, and also other EU fund managers (and Luxembourg sub-threshold managers) managing Luxembourg CSSF-regulated funds (including ELTIFs), to provide in electronic format data on the pre-contractual sustainability disclosures made under the Sustainable Finance Disclosure Regulation (the “SFDR”) for funds currently being marketed. Along with the Communication, the CSSF also published a [user guide](#) with the formats, contents and technical details of the Data Collection Exercise (the “User Guide”).

The Data Collection Exercise aims to collect data in digital format relating to information published by funds categorized under Article 8 and Article 9 of the SFDR in pre-contractual templates under SFDR and the Commission Delegated Regulation (EU) 2022/1288 (the “SFDR Level II”). It also seeks to obtain confirmation on certain additional SFDR- and SFDR Level II-related questions outside the pre-contractual templates, which seem to be of relevance to the CSSF. The CSSF’s communication is interesting and of broader practical relevance as it gives some indication on how it interprets the scope of Article 8 and 9 of the SFDR in the way in which it has framed the questions for response by managers.

The deadline for managers in scope to submit the initial report is **15 June 2023**.

## Scope of the Data Collection Exercise:

With respect to alternative investment funds (“AIFs”) and their managers (“AIFMs”),<sup>1</sup> the Data Collection Exercise is **mandatory for all Luxembourg-authorized AIFMs with respect to each Luxembourg AIF under management (including ELTIFs and unregulated AIFs)**. It also applies to registered (i.e., subthreshold) Luxembourg AIFMs

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<sup>1</sup> The Data Collection Exercise also extends to UCITS management companies and IORPs.

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with respect to any Luxembourg CSSF-regulated AIF under management. **Non-Luxembourg EU AIFMs (registered and authorised) are in scope with respect to Luxembourg CSSF-regulated AIFs, as well as Luxembourg ELTIFs, that they manage on a cross-border basis.** The scope also extends to each sub-fund of each applicable Luxembourg umbrella fund.

The Data Collection Exercise primarily relates to existing pre-contractual disclosures (e.g., private placement memoranda, website disclosures and other disclosures under Articles 6, 7, 8 and 9 of the SFDR). It appears only to apply to funds that are currently fundraising. Managers must ensure that information submitted is kept up to date.

#### **Content of the Data Collection Exercise:**

The focus of the regime is on managers in scope to provide information for funds disclosing under Article 8 or 9 of the SFDR, covering the environmental and/or social characteristics or objectives of the funds. Managers must also provide information for funds that are in scope of SFDR but not disclosing under Articles 8 or 9 of the SFDR, covering information relating to sustainability risk and principal adverse impacts (“PAIs”) pursuant to Articles 6 and 7 of the SFDR. The following information is subject to the Data Collection Exercise:

- **Article 6 and Article 7 of the SFDR.**<sup>2</sup> The CSSF has specified four questions for funds that disclose under Articles 6 and 7 of the SFDR. These are: (i) whether sustainability risks are considered in investment decisions for the fund; (ii) whether this has been disclosed in accordance with the law (covering disclosures required under Article 6 of the SFDR); (iii) whether principal adverse impacts on sustainability factors are considered for the fund; and (iv) if that information is disclosed in accordance with the law (covering disclosures required under Article 7 of the SFDR).
- **Article 8 and 9 Funds.**<sup>3</sup> The CSSF requests that managers in scope provide all the points of disclosure already provided to investors in the pre-contractual template for Article 8 funds. As the information is provided in a standardised table format, the CSSF provides various categories for funds to select when answering the questions, such as the environmental and/or social characteristics promoted. In this regard, the CSSF provides guidance that gives some indication of its administrative practice and interpretation on the pre-contractual disclosure requirements and the scope of Article 8 of the SFDR. For instance:

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<sup>2</sup> See Annex I of the User Guide.

<sup>3</sup> See Annex II of the User Guide.

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- **Environmental and/or Social Characteristics Promoted by an Article 8 fund.** Under the reporting system, funds will choose from a predetermined list of environmental and/or social characteristics. Under “*Environmental Characteristics*” these include “energy”, “renewable”, “waste”, “greenhouse gas”, “water and land”, “biodiversity”, “circular economy” and “raw material”. Under “*Social Characteristics*” these include “inequality”, “social cohesion”, “social integration”, “labor relations”, “investment in human capital” and “economically or socially disadvantaged communities”. The list is not exhaustive. A manager can select one or more applicable characteristics, and if the fund’s activities do not fall within the categories provided, the fund can select “other” and provide a short description (not exceeding 50 characters). This suggests that the CSSF conceives of promotion of environmental and/or social characteristics in broad terms.
  
  - **Investment Strategy of Article 8 and 9 Funds.** Again, the CSSF offers a list of options to describe the ESG-related investment strategy. The reporting system allows the fund to choose from “Best in class”, “Thematic”, “ESG integration”, “ESG engagement”, “Impact Investing” and “Exclusions”. The categories are based on a list provided by the European Securities and Markets Authority in a supervisory briefing.<sup>4</sup> The list is not exhaustive, and it is possible to select one or more options relating to ESG. If the investment strategy of the fund does not fall within the categories provided, the fund can select “other” and provide a short description (not exceeding 50 characters). Therefore, the CSSF appears to be open to funds using other categorisation to describe the binding investment strategies. It is also interesting that the CSSF accepts “ESG integration” (which is broadly understood as taking into consideration ESG risks but not qualifying the investment policy) as a possible and sufficiently binding ESG-related investment strategy. The CSSF also offers “ESG engagement” as a possible (but not mandatory) strategy for an Article 8 fund.
  
  - **Adoption of Policies for Assessing Good Governance Practices of Their Portfolio Companies.** Here, the CSSF simply asks whether the fund has applied a policy to assess good governance practices of investee companies, requiring a Yes/No answer. If the fund does not have a policy for assessing the good governance of its portfolio companies, it is required to provide a short explanation. The CSSF’s approach is

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<sup>4</sup> ESMA, Supervisory Briefing, Sustainability Risks and Disclosures in the Area of Investment Management, point 35 (<https://www.esma.europa.eu/document/supervisory-briefing-sustainability-risks-and-disclosures-in-area-investment-management>) [last visited 4 April 2023].

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interesting in that the Commission published its view that all Article 8 funds must ensure that their investee companies follow good governance practices, which raises practical questions as not all funds have sufficient influence on their investee companies.<sup>5</sup> In light of the Commission's view, it is unclear whether a negative answer to the CSSF's question will raise any issues from a regulatory perspective. The CSSF approach (if it reflects its administrative practice) seems a reasonable one.

- **Minimum Environmental or Social Safeguards for Investments by Article 8 and 9 Funds Included in "Other"**. The CSSF permits a fund to answer these questions with "yes" or "no". It is possible to state that no minimum safeguards will be taken into account, and no explanation is needed for such an answer. However, it is unclear whether a negative answer will raise issues from a regulatory perspective.
- **Definition of Sustainable Investments**. With respect to sustainable investments that have an environmental objective, the CSSF requires funds to select one of the environmental objectives specified in the Taxonomy Regulation and SFDR (such as "Climate change mitigation", "Transition to circular economy" or "Reduction in carbon emissions"). This conflicts with the general view that a fund can invest in other environmental objectives under the SFDR's broader concept of sustainable investments as well as in the environmental objectives specified in the Taxonomy Regulation.

The CSSF raises some additional questions for "supervisory purposes". These questions do not refer to the content of the pre-contractual template but rather to the status of the fund and are of relevance in practice (such as, "Sub-fund still in a ramp-up period?"). This is a helpful question, as it indicates that the CSSF takes ramp-up periods into account in the context of funds committing to minimum percentages of sustainable investments or investments aligned with promoted environmental or social characteristics. The CSSF also asks whether relevant information has been provided to investors, and how, and helpfully appears to support the industry's view that the SFDR product-related information only needs to be made available to investors (as opposed to made available on a public website).

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<sup>5</sup> Questions related to Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on Sustainability-related Disclosures in the Financial Services Sector (SFDR) 17 May 2022, page 7, and 8 ([https://www.esma.europa.eu/sites/default/files/library/c\\_2022\\_3051\\_f1\\_annex\\_en\\_v3\\_p1\\_1930070.pdf](https://www.esma.europa.eu/sites/default/files/library/c_2022_3051_f1_annex_en_v3_p1_1930070.pdf)) [last visited 4 April 2023].

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**Confidentiality of the Information Disclosed to the CSSF:**

In line with previous data collection exercises, we expect the CSSF to publish a summary on its findings and main conclusions. Information on individual managers and funds should remain confidential in line with the CSSF's general professional secrecy obligations.

**Key Timelines:**

**The deadline for submission of the initial report is 15 June 2023.** The CSSF permits the submission of the data through the S3 ("simple storage service") protocol, which is already available. **By 2 May 2023, an online solution "eDesk" will be made available for Managers to manually input information of each fund/sub-fund.**

The Data Collection Exercise will be extended to PAI statements and periodic disclosure templates. The CSSF will provide additional details on the timing and practical aspects with respect to the extension of the Data Collection Exercise.

We will keep you updated on any further developments and remain available to answer any questions.

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Please do not hesitate to contact us with any questions.

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