



Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

Process clarifications for UCITS and AIFs pre-contractual documentation updates in relation to the **Level 2 measures in relation to the Sustainable Finance Disclosure Regulation¹**

October 2022

¹

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 - associated requirements to be applicable as at 1 January 2023.

This document updates an earlier industry communication issued in November 2021.

Available here: https://www.centralbank.ie/docs/default-source/regulation/industry-market-sectors/funds/industry-communications/taxonomy-regulation-sfdr-clarification-document.pdf?sfvrsn=3f06921d_4

Implementation of the Commission Delegated Regulation (EU) 2022/1288 (“SFDR Level 2 requirements”) supplementing the Sustainable Finance Disclosure Regulation (“SFDR”): Process clarifications with respect to UCITS and AIFs pre-contractual document (prospectus/supplement) updates applicable 1 January 2023 (“SFDR Level 2 Deadline”)

Context

The SFDR requires financial market participants and financial advisers, which includes UCITS management companies and Alternative Investment Fund Managers (AIFMs), to make pre-contractual and ongoing disclosures to end investors with regard to the integration of sustainability risks, the consideration of adverse sustainability impacts, the promotion of environmental or social characteristics and sustainable investment.

The SFDR Level 1 requirements came into force on 10 March 2021, whilst the SFDR Level 2 requirements will apply from 1 January 2023. This will result in updates to pre-contractual documentation for UCITS, RIAIFs and QIAIFs (“AIFs”).

Central Bank approach

To facilitate orderly implementation of these requirements, the Central Bank has established a streamlined filing process for pre-contractual document updates based on the SFDR Level 2 requirements, under which both UCITS management companies and AIFMs (‘Managers’) will be required to certify compliance with the requirements via an attestation.

Overarching expectations

The responsibility rests with the relevant Manager to ensure compliance with the applicable requirements.² Importantly, the streamlined regime should not be seen as providing scope for a lesser quality of disclosures than would otherwise be produced. Please be aware that, whilst a noting / confirmation of receipt will issue following the submission of each update, the Central Bank intends to undertake a review of a sample of the submissions received and will engage with selected applicants on a bilateral basis where queries arise in respect of the applications that fall within the sample. As such, notwithstanding the noting / confirmation issued, the Central Bank may require revisions to documentation to be made at a later date.

² Available here: <https://www.esma.europa.eu/document/letter-european-commission-esas-application-regulation-eu-20192088-sustainability-related>

Documentation and timing

Q. What documents need to be filed with the Central Bank for UCITS and AIFs?

A Responsible Person³ shall certify that the amendments made are in accordance with:

- the SFDR Level 2 requirements;
- amendments made to the investment policies and strategies to allow consistency with the disclosures included in the Annex. This includes amendment to disclosures made to comply with SFDR Level 1 and/or the Taxonomy Regulation requirements which now require amendment for consistency with SFDR Level 2 disclosures;
- product level PAI disclosures required under Article 7(1)(a) for Article 6 funds; and/or
- amendments made to the prospectus/supplement to reflect the requirements of European Commission Q&As on SFDR, ESMA supervisory briefing on sustainability risks and disclosures in the area of investment management, amendments to reflect other clarifications published by the ESAs' or the Central Bank in relation to the SFDR Level 2 requirements.

The confirmation should make it clear that the revised documents do not contain any other amendments to the pre-contractual documentation. This attestation along with the relevant revised final dated documents (prospectus/supplement) for UCITS and AIFs are required to be submitted to the dedicated mailbox SFDR@centralbank.ie by close of business on the relevant date for automated noting by the Central Bank. Documents should be dated the date they are submitted.

Q. Is there a prescribed format for the email submissions?

Yes. The subject line in the email must follow the following format: [Article X] [Name of Management Company] [Name of Umbrella Fund/Standalone/Sub-Fund(s)]. Note: The Article is required to easily identify the SFDR classification that applies to the relevant fund.

Q. When must filings be made to ensure compliance (noting) by SFDR Level 2 Deadline?

Filings must be made no later than 1 December 2022. This deadline applies to all UCITS, RIAIFs and QIAIFs.

³ The Responsible Person of a UCITS is the UCITS management company or the UCITS Self-Managed Investment Company (SMIC); the Responsible Person of an AIF is the AIFM or the Internally Managed AIF, or in the case of an AIF with a non-EU AIFM the Responsible Person is the fund itself.

Q. Is it possible to make other changes to the prospectus, as well as the SFDR Level 2 requirements as part of the streamlined process?

The streamlined process is only available for SFDR Level 2 requirements, updates to ensure consistency with the disclosures included in the annex, PAI disclosures and other SFDR related updates that arise due to clarifications from the European Commission, ESAs or Central Bank. Any other changes must comply with the usual Central Bank review process for the relevant fund and where applicable should be submitted to allow sufficient time for consideration.

Q. I have a submission already under review with the Central Bank, can they be included in the streamlined process?

Submissions filed with the Central Bank but not cleared of comment by the filing deadline will need to comply with the usual Central Bank review process even where those submissions are ultimately cleared of comment prior to 1 January 2023. Submissions that are clear of comment before the filing deadline (but not yet authorised) will also need to comply with the usual Central Bank review process.

Q. I would like to make a filing under the streamlined process but the SFDR related updates also involves a change of name. How should I submit this?

Where an SFDR related change of name is required, the submission should be made via the Portal in the usual manner. The Central Bank will apply a version of the streamlined process in such cases, provided the submission includes the attestation referenced above. Please note that the ability to note such submissions may be impacted by high volumes and therefore the noting letter may not issue on the date the submission is received. However, it is our intention that the noting will issue at the earliest opportunity and will be dated as at the date that documents were submitted.

Q. I would like to make a filing under the streamlined process but the SFDR related updates also involves reclassification of the fund. How should I submit this?

These submissions may be made via the streamlined process, however, a rationale for the reclassification must be included.

Q. I have made a submission to the Central Bank for the authorisation of a new fund / sub-fund. Can I qualify for the streamlined process?

No. Where a new fund/sub-fund application has been made with the Central Bank then the disclosures made in relation to SFDR Level 2 requirements will be reviewed.

Q. After 1 January 2023, will the streamlined process be available for SFDR Level 2 requirements?

No. Where a submission is made with the Central Bank subsequent to the SFDR Level 2 Deadline then the disclosures will be reviewed by the Central Bank and may be subject to comment.

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