Regulatory insights

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Contents

European updates

ESG & Sustainable Finance

ESAs analyse the extent of voluntary disclosure of principal adverse impacts under the SFDR

The joint committee of the ESAs published on the 28 September 2023 their [second annual report](#) on the extent of voluntary disclosure of principal adverse impacts (PAIs) under the article 18 of the SFDR.

Similar to the approach adopted for 2022 report, the ESAs launched a survey of NCAs to assess the current state of entity-level and product-level voluntary PAI disclosures under the SFDR. The key points include:

- The results show an overall improvement compared to the previous year, although there is still significant variation in the extent of compliance with the requirements and in the quality of the disclosures both across financial market participants (FMP) and jurisdictions.
- Disclosures appear easier to find on websites compared to the previous year.
- When FMP do not consider PAIs, they should better explain the reasons for not doing so.
- Even though FMP are encouraged to do so under the SFDR they are generally not disclosing to what extent their investments align with the Paris Agreement.
- Voluntary disclosures of PAI consideration by financial products will be further analysed in future reports.

Overview of best practices include:

- FMP to give as many details as possible on the methodology used for the assessment of PAIs.
- FMPs should not include ESG elements which are not relevant for an art. 4(1)(b) SFDR statement and hence potentially misleading for investors (e.g. consideration of sustainability risks, exclusion policies or ranking of the counterparties based on ESG factors).
- A clear explanation about why the FMP does not consider PAI should be provided and, when invoking a current lack of relevant data available on the market, the FMP should include details on whether and when the FMP plans to consider PAIs by reference to the sustainability factors.

Finally, the report also includes a set of recommendations for the EU Commission to consider ahead of the next comprehensive assessment of the SFDR.

Note: PAIs are the most significant negative impacts of investments on the environment and people. When a financial market participant considers PAI, it means that it should seek to reduce the negative impact of the companies they invest in.

European Commission consults on sustainable finance disclosures

The EU Commission has published on 14 September 2023 a targeted and public consultation that aims to gather information on the implementation of the SFDR. The consultation is intended to focus on assessing any shortcomings in the SFDR to improve legal certainty, enhance usability and improve the SFDR's role in mitigating greenwashing.

In particular, the EU Commission seeks views on potential issues related to unclear or missing definitions of key concepts, difficulties with the functioning of the principal adverse impacts (PAI) regime, as well as the use of the article 8 and article 9 disclosure rules as de facto product labels and merits of developing a more precise EU-level product categorisation system.

The consultations also consider the SFDR's interaction with other sustainable finance legislation such as Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment and amending the Disclosure Regulation (the Taxonomy Regulation) as well as potential changes to the disclosure requirements for financial market participants.

The consultation will be open until 15 December 2023.

EFAMA quarterly statistics

EFAMA has published on 19 September 2023 its international quarterly statistical release regarding the developments in the worldwide investment fund industry during the second quarter of 2023.

The main developments through Q2 2023 are as follows:

- Net assets of worldwide investment funds increased by 3.2% in euro terms.
  - Net assets of worldwide investment funds reached EUR 64.43 trillion in Q2 2023.
  - Measured in local currency, net assets in the two largest fund markets, the United States and Europe, increased by 4.3% and 2.0%, respectively.
- Net inflows into long-term funds further strengthened in Q2 2023 due to strong demand for bond funds.
  - Worldwide long-term funds recorded net inflows of EUR 149 billion, compared to EUR 123 billion in Q1 2023. The Asia-Pacific region experienced the highest net inflows (EUR 111 billion), followed by the United States (EUR 64 billion), and Europe (EUR 1 billion).
  - Global equity funds recorded net outflows of EUR 27 billion, compared to net inflows of EUR 5 billion in Q1 2023. China registered the highest net sales (EUR 32 billion), whereas the bulk net outflows occurred in Europe (EUR 31 billion) and the United States (EUR 11 billion).
  - Bond funds maintained their positive trajectory, attracting net inflows of EUR 208 billion, up from EUR 137 billion in Q1 2023. The United States, China and Europe recorded the highest level of net sales (EUR 88 billion, EUR 77 billion, and EUR 44 billion, respectively).
  - Multi-asset funds continued to record net outflows of EUR 80 billion. Europe accounted for most of these net outflows (EUR 33 billion), with China and the United States also registering net outflows of EUR 17 billion and EUR 12 billion, respectively.
- Global money market funds suffered a sharp decline in net inflows.
  - Worldwide money market funds (MMFs) recorded net inflows of EUR 275 billion, down from EUR 507 billion in Q1 2023.
  - Europe's MMFs experienced a decline in net inflows to EUR 8 billion from EUR 11 billion in Q1 2023.
  - MMFs in the United States continued to attract net inflows, albeit significantly less than in Q1 (EUR 170 billion compared to EUR 405 billion).
  - China saw net inflows of EUR 67 billion, compared to EUR 68 billion in Q1 2023.

> “*After the annus horribilis of 2022, bond funds are back with net sales totaling EUR 345 billion at the global level during the first half of this year. Two factors can explain this recovery: first, expectations that inflation should continue to decline, which would open the door to a more stable interest rate environment and potential capital appreciation, and second, the current high level of interest rates, which gives investors the opportunity to earn decent income.*”
> Bernard Delbecque, Senior Director, Economics and Research

IOSCO Policy Recommendations for Decentralized Finance (DeFi)

IOSCO has published a Consultation Paper proposing nine policy recommendations (the Recommendations) to address market integrity and investor protection concerns arising from decentralised finance (DeFi).

DeFi commonly refers to financial products, services, arrangements, and activities that use distributed ledger or blockchain technologies, including self-executing code referred to as smart contracts.

The Recommendations cover the following six key areas:

(1) Understanding DeFi arrangements and structures,

(2) Achieving common standards of regulatory outcomes,

(3) Identification and management of key risks

(4) Clear, accurate and comprehensive disclosures

(5) Enforcement of applicable laws,

(6) Cross-border cooperation.

The consultation closes on 19 October 2023.

EU Commission first report on the state of the digital decade

The EU Commission published its first report on the state of the digital decade, published on 27 September 2023, The report aims to provide a comprehensive look at progress towards achieving the digital transformation to empower a more digitally sovereign, resilient, and competitive EU.

It includes an assessment of the EU's performance towards Europe's 2030 objectives and targets focusing on four main pillars:

i. digital skills,

ii. digital infrastructure,

iii. digitalisation of businesses, including the use of Artificial Intelligence (AI), and

iv. digitalisation of public services.

It also includes the monitoring of the European Declaration on Digital Rights and Principles, which reflects the EU's commitment to a secure, safe and sustainable digital transformation, putting people at the centre.

The 2023 report, which is the first of a series of annual reports, is a call to Member States for collective action to address the current investment gaps, accelerate digital transformation in Europe and intensify efforts to reach the objectives of the Digital Decade Policy Programme (DDPP). The DDPP was adopted by the European Parliament and the Council and entered into force on 9 January 2023, and includes a system of collaborative governance between the EU and national authorities.

The 2023 report's horizontal recommendations and the country-specific recommendations present a clear and operational way forward. The recommendations will be the basis for discussion and collaboration between the EU Commission and the Member States on how to achieve our common goals. This work will be supported through the implementation of large-scale multi-country projects, including the newly introduced European Digital Infrastructure Consortia (EDICs).

Glossary

AIF Alternative Investment Fund (EU)

AIFMD Directive 2011/61/EU on Alternative Investment Fund Managers

AIFMs Alternative Investment Fund Managers

AML Anti-Money Laundering

CSRD Corporate Sustainability Reporting Directive

CySEC Cyprus Securities and Exchange Commission

CP Consultation Paper

EBA European Banking Authority

EC European Commission

ESG environmental, social, and governance

EMIR European Market Infrastructure Regulation

ESAs European Supervisory Authorities (EBA, EIOPA and ESMA)

ESMA European Securities and Markets Authority

EIOPA European Insurance & Occupational Pensions Authority

EU European Union

MiFID Markets in Financial Instruments Directive

NCA National Competent Authority

RTS Regulatory Technical Standards

SFDR Sustainable Finance Disclosure Directive

OECD Organisation for Economic Co-operation and Development

UCITS Directive directive 2009/65/EC on Undertakings for Collective investments in Transferable Securities

UCITS Undertakings for Collective investments in Transferable Securities (EU)

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