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CSSF Review on Sustainability Disclosures for Issuers – Guidance for non-financial and financial undertakings

On 26 October 2022, the Commission de Surveillance du Secteur Financier (“CSSF”) published a thematic review on “Sustainability Disclosures for Issuers – A first look on information reported under Article 8 of the Taxonomy Regulation for the transition year” (“CSSF Review”).

I. Scope

The CSSF Review was conducted based on a sample population of 31 **non-financial undertakings** from various sectors (e.g., Real Estate & Infrastructure, Transportation & Logistics or Consumer Products & Retail), whose securities are admitted to trading on a regulated market, for which Luxembourg is the home Member State, exceeding 500 employees, total assets of EUR 20 million and/or a net turnover of EUR 40 million (“**Issuers**”).

Such Issuers are subject to Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 on the disclosure of non-financial and diversity information by certain large undertakings and groups (“**NFRD**”).

The CSSF Review focused on the information required by Article 8 of the Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment, and amending Regulation 2019/2088 (“**Taxonomy Regulation**”) to be published by Issuers between 1 January 2022 and 30 June 2022, i.e. for Issuers with a financial year ending 31 December 2021.

II. Context

Since 1 January 2022, **non-financial undertakings** shall, according to Article 10 (2) of the Commission Delegated Regulation (EU) 2021/2178 (“**Disclosures Delegated Act**”) disclose:

- the proportion of Taxonomy-eligible and Taxonomy non-eligible economic activities in their total turnover, capital and operational expenditure (“**KPIs**”); and
- the qualitative information referred to in Section 1.2. of Annex I of the Disclosures Delegated Act relevant for this disclosure, including but not limited to a description of the nature of their Taxonomy-eligible economic activities, by referring to the Commission Delegated Regulation (EU) 2021/2139 (“**Climate Delegated Act**”).

In contrast, **financial undertakings** must comply with the provisions of Article 10 (3) of the Disclosures Delegated Act and are accordingly only required to report the proportion of their exposures to activities that are considered as eligible in their total assets as well as to disclose qualitative information.

III. Key findings

The CSSF Review provides a summary of the observations of the CSSF pertaining to the content and quality of the information disclosed by the Issuers in relation to Article 8 of the Taxonomy Regulation, and also contains a series of helpful reminders of mandatory obligations, practical recommendations as well as references to relevant tools and guidance papers published at EU level.

Whilst the CSSF Review focuses on non-financial undertakings, some of the reminders, recommendations and references are also relevant for financial undertakings.

The key messages included in the CSSF Review are the following:

- when reporting on Taxonomy-eligible activities, Issuers shall not (only) refer to the NACE Codes, but also to the corresponding economic activity as per the Climate Delegated Act.

For the purposes of identifying Taxonomy-eligible activities, the CSSF Review refers to two specific tools:

- the **EU Taxonomy Compass**: this tool enables users to verify which activities are included in the EU Taxonomy as Taxonomy-eligible activities, to which objectives they substantially contribute and what criteria they have to meet. It provides a visual representation of the contents of the EU Taxonomy, starting with the Climate Delegated Act.

Looking forward, the EU Taxonomy Compass will be updated to include future delegated acts specifying technical screening criteria for additional economic activities substantially contributing to the climate objectives and the other environmental objectives of the Taxonomy Regulation;

- the **EU Taxonomy NACE Alternate Classification Mapping**: this tool was published by the Platform for Sustainable Finance, as an indicative mapping of selected industry classification systems (including NACE codes), including an indication of how they relate to the description of economic activities in the Climate Delegated Act.

The CSSF specifies that, whilst this mapping is not an official guidance document from the European Commission or from the three European Supervisory Authorities, it can be considered to be a valid source to reconcile the coding with the activity descriptions in the Climate Delegated Act;

- Issuers that do not have Taxonomy-eligible activities shall nevertheless complete Section B of the templates provided in Annex II of the Disclosures Delegated Act and provide qualitative disclosures explaining what these non-eligible activities are and why they are not eligible under the Taxonomy Regulation;
- all the activities that qualify as environmentally sustainable must be disclosed, regardless of their materiality status. The scope of eligible economic activities may thus go beyond the operations which may be considered as being part of the core activities of an undertaking;
- similar to the exemption mechanism provided for under the NFRD, subsidiaries may be exempted from the reporting obligations imposed under Article 8 of the Taxonomy Regulation, provided that the relevant disclosures are included in the management report or in a separate report of another related undertaking;
- Issuers are encouraged to provide more qualitative information on the Taxonomy-eligible activities that have been retained for each KPI, including in particular why certain Taxonomy-eligible activities have been retained for certain KPIs and not for others;
- for turnover and capital expenditure, Issuers shall include references to the related line items in the non-financial statements as required by the Disclosures Delegated Act. The CSSF recommends in this respect that, whilst this is not required for operating expenditure, Issuers should provide similar references for operating expenditure as far as practicable;
- Issuers are invited to revisit their accompanying narrative disclosures in light of the CSSF Review and the good practices observed amongst their peers, to ensure a consistent approach in each sector, or between entities encompassing the same economic activities;
- Issuers are reminded that, as from January 2023, they will have to complete the reporting tables included in Appendix II of the Disclosures Delegated Act and explain if and why the application of any calculations has changed since the previous reporting period;
- to comply with section 1.2.2.1 of Appendix I of the Disclosures Delegated Act, Issuers should provide qualitative information on their internal organisation together with information on how the assessment processes are undertaken internally, which should allow readers to understand (i) how the Taxonomy-eligibility process has been undertaken and (ii) how and by whom compliance with the technical screening criteria referred in the delegated acts has been assessed;
- Issuers are also urged to keep in mind the significant disclosure requirements found in section 1.2.2.2 of Appendix I of the Disclosures Delegated Act.

IV. Next Steps

The CSSF Review emphasizes that:

- for **non-financial undertakings**, the Disclosures Delegated Act will fully apply as from 1 January 2023, and such undertakings will, according to Article 10(4) of the Disclosures Delegated Act, need to report their activities that are considered **aligned** with the Climate Delegated Act. Issuers are therefore invited to review the methodology for the reporting of KPIs as presented in point 2 of Annex I of the Disclosures Delegated Act, and complete the templates for KPIs presented in Annex II of the Disclosures Delegated Act;
- for **financial undertakings**, the provisions of Article 10 (2) of the Disclosures Delegated Act will still apply in 2023. Accordingly, financial undertakings are only required to report the proportion of their exposures to activities that are considered as **eligible** in their total assets and disclose qualitative information.

The CSSF Review further specifies that the information published under Article 8 of the Taxonomy Regulation will be subject to a particular attention of the CSSF in 2023.

Contact our experts to help you meet the challenges of the constantly evolving ESG framework.

To read the CSSF Review, click [here](#).

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