WILLIAM FRY

// ASSET MANAGEMENT & INVESTMENT FUNDS

Asset Management & Investment Funds Update

November 2024

Key Dates & Deadlines: Q4 2024 / Q1 2025

The following are key dates and deadlines in Q4 2024 / Q1 2025 along with possible impacts and action items arising for fund managers.

Date	Source	Summary	Action/Impact
Q4		EMIR 3.0 Regulation and amending Directive expected to be adopted with impacts across the key EMIR requirements of clearing, risk management and reporting.	EMIR 3.0 focusses on incentivising clearing in the EU post-Brexit, including through the introduction of a new EU CCP active account obligation. It also sets down rules for NCAs' application of penalties for EMIR breaches and amends the clearing threshold calculation methodology. Provision is made for the adoption of technical standards before certain EMIR 3.0 provisions come into effect.
Q4		Fitness and Probity CBI to implement recommendations of Review of the Fitness and Probity Regime	Please see article on topic in the August 2024 Update for further details.
Q4		Loan originating funds CBI to consult on updates to its loan origination framework for funds to align with the regime introduced under the AIFMD Review.	Please see here for further details.
26 October		ELTIF RTS Entry into force of ELTIF 2.0 regulatory technical standards	Please see article on this topic in this update for further details.
1 November		UK Overseas Funds Regime (OFR) First OFR landing slots open for operators of umbrella EEA UCITS whose name begins with the letter "A" (in the TMPR) between 1 November	Please see article on topic including the table of landing slots in the October 2024 update for further details.

		2024 and 31 January 2025. The 3-month landing slots will open by alphabetical order of the fund operator's name. The last landing slot for operator name bucket W - Z and firm with digit in title is 1 July 2026 - 30 September 2026.	
21 November		ESMA Guidelines on funds' names using ESG and sustainability related terms Deadline for these guidelines to apply for newly established funds. Funds existing before this date have a transitional period until 21 May 2025 to apply the guidelines.	Please see article on topic in the September 2024 Update for further details.
22 November		Macroprudential policy for non-banks Closing date for Commission consultation on the adequacy of macroprudential policies for the non-bank financial intermediation sector	See our June 2024 Update for further details.
2 December		UK SDR naming and marketing rules Entry into force of FCA 'naming and marketing' and disclosure rules save for those firms that submitted an application to the FCA for temporary flexibility	Please see article on this topic in this update for further details.
21 December		European Green Bond Standard Application date for key provisions of the Regulation setting down the voluntary standard for issuing bonds using the 'European Green Bond' or 'EuGB' designation.	The proceeds of EuGB bonds are (subject to limited flexibilities) allocated to Taxonomy-aligned environmentally sustainable activities and the Regulation includes pre- and post-issuance transparency rules, regulated prospectus rules, and a new registration system and supervisory framework for external reviewers which are required to review issuers' reports.
30 December		Markets in Crypto-Assets Regulation (MiCAR) Final MiCAR application date.	See here for further details.
31 December		PRIIPs KID Expiration date for the derogation granted to UCITS from the calculation rules for "actual transaction costs".	See section 4 "Transaction Costs" of this William Fry article.
1 January 2025		CBI PCF annual confirmation and CF certification CBI Portal open to receive 2024 PCF Annual Confirmation and CF Annual Certification	Please see article on this topic in this update for further details.
Jan / Feb 2025		ESMA CSA on sustainability disclosures	Please see article on topic for further details.

		ESMA expected to issue its report on the outcome of the CSA	
2 April 2025		UK SDR naming and marketing rules End of temporary flexibility period for FCA 'naming and marketing' and disclosure rules	Please see article on this topic in this update for further details.
21 May 2025		ESMA Guidelines on funds' names using ESG and sustainability related terms Funds in existence on 21 November 2024 must comply with the guidelines from this date.	Please see article on topic in the September 2024 Update for further details

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MANAGEMENT-LEVEL UPDATES

ETF Updates:

CBI ETF review

In a speech on 24 October, the CBI Deputy Governor, Derville Rowland, confirmed that the CBI has undertaken a review of the oversight that fund management companies perform on key players within the ETF ecosystem, particularly authorised participants and contracted market makers.

An industry communication is to issue shortly with full details of the findings. However, the CBI indicated that the review identified good practices with regard to oversight, as well as some areas for improvement. These include due diligence, ongoing monitoring and stress testing performed by management companies. The CBI also found a lack of board reporting concerning the activities of these firms. The review further identified potential reliance and concentration on a small number of authorised participants and contracted market makers.

UCITS ETF identifier at fund or share class level

Again, in the speech of 24 October, the CBI announced that it is to permit the establishment of UCITS ETF share classes in investment funds. This welcome development brings consistency to ETF naming conventions in Europe. It also reduces the potential for investor confusion where a fund contains a mix of listed and unlisted share classes.

The CBI has updated its UCITS Q&A to facilitate the use of the "UCITS ETF" identifier at the level of the sub-fund or listed share class.

Disclosure obligations

The UCITS Q&A sets out the disclosure obligations where a UCITS has both listed and unlisted share classes. The prospectus should clearly set out, in a table format, the differences between investing in a listed share class and in an unlisted share class. These differences must include:

- how to deal in shares of each class on each dealing day, the difference in process, dealing frequency and settlement timeframe
- dealing mechanism differences e.g. investors in a UCITS ETF share class must deal through their broker
- cost of dealing
- minimum dealing amounts
- shareholder rights

The prospectus must also disclose, at least, risk factors relating to liquidity profile and difference in price between unlisted and ETF share classes.

CBI adjusts Streamlined Process for Implementation of Fund Name Guidelines

The CBI introduced a streamlined filing process for changes to fund names arising as a result of ESMA's Guidelines on funds' names using ESG or sustainability-related terms, summarised in our October update. Following constructive discussion at a CBI-hosted SFDR workshop with industry representatives in October, the CBI has adjusted the process to permit funds, in addition to changes to fund names, to incorporate minor changes to disclosure in the offering documentation and pre-contractual documentation made solely for the purpose of bringing the fund into compliance with the Guidelines' requirements.

Adjusted process

To avail of this adjusted streamlined process, the CBI will require a certification from the fund board that the changes do not represent a material change to either of the investment objective, investment policy, strategy, or risk profile of the fund and are made solely for the purpose of bringing the fund into compliance with the Guidelines' requirements. The legal advisor shall also attest to this.

The CBI's earlier published process document has been updated to reflect the adjusted requirements.

ESMA guidelines on fund names – CBI notice

The CBI published a notice of intention in relation to the fund names Guidelines on 21 October. The notice stated that the CBI will, in due course, consult on the incorporation of related provisions in the CBI UCITS Regulations and AIF Rulebook. In the interim, the CBI expects full compliance with the Guidelines from 21 November 2024.

CBI PCF annual confirmation and CF certification

Enhancements to the current Fitness & Probity (**F&P**) Regime under Individual Accountability Framework require regulated firms to proactively certify that individuals carrying out CF and PCF roles meet the CBI's standards of F&P. The Certification Regulations have applied since 8 January 2024 and the first submission will be required in 2025.

PCF and CF submissions

Both the PCF Annual Confirmation and CF Annual Certification facility will be open on the CBI Portal from 1st Jan 2025 to facilitate 2024 submissions.

Guidance

The current PCF Annual Confirmation Guidance will be updated to include the CF Annual Certification process which will be similar to the PCF Annual Confirmation process detailed in the guidance. The update guidance will be available on the CBI website in December.

FCA SDR naming and marketing rules – temporary flexibility

The naming and marketing rules and accompanying disclosures under the UK's Sustainability Disclosure Requirements (SDR) come into effect on 2 December 2024 for firms that are not using labels. Firms should now be taking reasonable steps to ensure compliance with these rules.

SDR naming and marketing rules

The SDR prohibits asset managers that conduct in-scope business for retail clients from using certain sustainability-related terms in the name or marketing materials of the relevant product. Terms prohibited include 'ESG', 'environment', 'social', 'impact', 'responsible' and 'sustainable'. Firms will only be allowed to use these terms in the product's name or marketing materials if: (i) the firm uses one of the four sustainability labels for the product; or (ii) the firm satisfies certain criteria, including producing sustainability disclosures under the SDR for that product.

Disclosure requirements

The SDR introduced four disclosure requirements:

Consumer-facing disclosures: These will be mandatory for products that use a label or that use sustainability-related terms without a label. They should be clear summaries of the key sustainability features of a product, targeted towards retail investors, and no more than two A4 sides in length. They will be provided when the product is offered.

Pre-contractual product-level disclosures: These will be mandatory for products that use a label or that use sustainability-related terms without a label. They will provide more detailed pre-contractual sustainability information than the consumer-facing disclosure.

Ongoing product-level disclosures: These will be annual disclosures for products that use a label or that use sustainability-related terms without a label. They will provide updates on the progress of the product towards meeting its sustainability objective. They will be publicly available or, where this is not appropriate, provided to eligible clients on demand.

Entity-level disclosures: These will be mandatory for all asset managers with AUM above £5 billion, irrespective of whether they use product labels or sustainability terms. These disclosures will provide information on how the firm manages sustainability-related risks and opportunities at an entity-level.

FCA offers temporary flexibility

The FCA is offering limited temporary flexibility, until 5pm on 2 April 2025, for firms to comply with the 'naming and marketing' rules in relation to a 'sustainability product' which is a UK authorised investment fund in exceptional circumstances where the firm:

- submitted a completed application for approval of amended disclosures in line with ESG 5.3.2R for that fund by 5pm on 1 October 2024; and

- is currently using one or more of the terms ‘sustainable’, ‘sustainability’ or ‘impact’ (or a variation of those terms) in the name of that fund and is intending either to use a label, or to change the name of that fund

Where firms can comply with the rules without requiring this flexibility, they should do so. The FCA also expects firms to comply with the rules as soon as they can, without waiting until 2 April 2025.

ESMA 2025 annual work programme

ESMA has issued its 2025 annual work programme. This provides an insight into ESMA’s regulatory schedule and the workstreams that ESMA is mandated to deliver on during 2025. Specific outputs of relevance to the investment management sector in 2025 will be:

- RTS on the characteristics of LMTs.
- RTS on open ended Loan Originating AIFs.
- Guidelines on LMTs of UCITS and open-ended AIFs.
- Report on 2023-2024 CSA on sustainability in investment management.
- Peer review on depositary obligations under the UCITS Directive and AIFMD
- Report on costs charged by UCITS and AIFMs
- Technical advice on the review of the UCITS Eligible Assets Directive.

Sustainable Finance

In the area of sustainable finance, ESMA’s specific outputs for 2025 include; greenwashing indicators to support NCA supervision, guidance on sustainability claims to FMPs, development of machine readable templates for SFDR disclosures (subject to EC adoption of the revised RTS) and several technical standards under the ESG Ratings regulation, subject to its publication in the Official Journal.

ESMA as an organisation

ESMA has developed a set of key outcome indicators (KOIs) for ESMA as an enterprise in its own right, which measure the extent to which the priorities and drivers set out in ESMA’s 2023-28 strategy are being achieved. Underlining ESMA’s focus on supervision of greenwashing risk, one KOI relates to ‘greenwashing risks in the funds industry - % EU funds with sustainability-related features which appear at risk of misleading investors’. The risk is assessed, based on consistency and clarity of funds documentation and its alignment with portfolio holdings data, using natural language processing techniques. A target will be established for each of the KOIs once a baseline has been established. The baseline for each KOI will be the average value of the first three years of data collection.

Funds Sector 2030 report

The Department of Finance of Ireland issued a report on its review of the funds sector in Ireland entitled “Funds Sector 2030: A Framework for Open, Resilient & Developing Markets” on 22nd October 2024. The aim of the review is to ensure that Ireland maintains its leading position in asset management and funds servicing and ensure that Ireland’s funds sector framework is resilient, future-proofed, supportive of financial stability and a continued example of international best-practice. A consultation and engagement process across the funds sector launched in April 2023 which informed the ultimate content of the report.

Recommendations

The report made 42 recommendations which fall under the following 9 separate themes: Legal structures and products – opportunities to improve Ireland’s offering safely; Ireland’s regulatory and supervisory regime - targeting risks, digitisation and reducing costs to authorised firms; Harnessing technology to boost Ireland’s competitiveness; Enabling more retail investment; Structured finance – assessing Ireland’s regimes and greater transparency; Providing stability and certainty for investment in property in Ireland; the funds sector’s role in supporting the green transition; Engagement and promotion; Skills and access to talent.

Next steps

The recommendations in the report have been endorsed by the Government of Ireland for implementation and/or further consideration.

Europe T+1 update

On 15 October 2024, ESMA, the ECB and the European Commission published a joint statement on shortening the standard securities settlement cycle in the European Union. ESMA is to assess the costs, benefits and impacts of shortening the settlement cycle in the EU and will deliver its report to the Council and European Parliament in the coming months. The joint statement emphasises the need for accelerated action and collaboration to allow for a smooth transition of T+1 in the EU.

European T+1 Industry Task Force

A task force comprising 21 trade associations involved in European capital markets published a High-Level Roadmap for Adoption of T+1 in EU Securities Markets on 14 October 2024. The task force is supportive of the move to T+1 in the EU. The report contains preliminary recommendations for both public authorities and industry participants, focussing on the necessary changes to the current legal, regulatory and operational framework as well as measures to support settlement efficiency. A transition period of 24 – 36 months has been recommended.

MiFID marketing communications – Dear CEO letter

The CBI issued a Dear CEO letter giving feedback to industry on the findings of a thematic review of MiFID firms' application of the marketing communications disclosure requirements. The letter outlines the CBI's expectations in relation to the application of the MiFID II Marketing and Advertising requirements.

It is relevant to Irish authorised fund management companies, as well as Irish-authorised MiFID investment firms and credit institutions, providing MiFID II services to retail clients.

William Fry's Financial Regulation Team has issued a series of articles on this topic:

MiFID II Marketing Communications Requirements - Dear CEO Letter - Required Actions

MiFID II Marketing Communications Requirements – Dear CEO Letter – Key Themes I

MiFID II Marketing Communications Requirements – Dear CEO Letter – Key Themes II

European Single Access Point – progress

The European Single Access Point (ESAP) will be a 'single point of access' digital platform for public financial, non-financial and sustainability-related information about EU companies and financial products. ESAP will create a single location where all this data will be accessible. Information to be submitted to ESAP is information that is already being made public under a range of EU directives and regulations, including the UCITS Directive, AIFMD, SFDR and CSRD. In practice, this means that entities will need to submit information to a collection body in data extractable or machine-readable form at the same time as it is required to be published under the EU relevant directive or regulation.

Another step towards realising ESAP

On 29 October, the ESAs published a final report containing implementing technical standards regarding certain tasks of the collection bodies and functionalities of the ESAP.

The final report has been sent to the European Commission for adoption.

The ESAP is expected to start collecting information in July 2026, while the publication of the information will start no later than July 2027.

PRODUCT-LEVEL UPDATES

ESMA performance fee updated Q&A

ESMA has issued a new Q&A in relation to crystallisation of performance fees for both UCITS and AIFs.

The question asked is whether in the case of creation of a new compartment/share class in an existing AIF or UCITS in the course of its financial year or in case of creation of a new AIF or UCITS, can performance fees be crystallised after less than 12 months from the date of creation of such a new AIF/compartment/share class (i.e.: the date in which the share class is launched/seeded)?

ESMA's answer is no. Performance fees, if any, should be crystallised after at least 12 months from the creation of a new AIF/UCITS/compartment/share class. In addition, the crystallisation date should be the same for all share classes of a fund that levies a performance fee.

ESMA report – portfolio exposure to climate physical risk

ESMA released a report illustrating how investment portfolios may be exposed to climate physical risk. The report looked at two different assessment methods used to give insights, based on an analysis of EU investment fund portfolio holdings. Developing an understanding of climate physical risk exposures is important for fund managers to identify and proactively manage the potential risks stemming from climate change, and for authorities to monitor climate-related risks to their supervisory remit.

Methodologies and data

Unsurprisingly, one of the main obstacles to climate physical risk assessment is data. The report includes a section giving examples of top-down and bottom-up assessments, to illustrate their merits and limitations. One approach uses the University of Notre Dame Global Adaptation Initiative (ND GAIN) Country Index, matching ND GAIN's country-level exposure scores and underlying indicators with Morningstar's data on funds' country exposures based on country names. Then the portfolio holdings data was combined with the European System of Central Banks climate risk indicators at the ISIN level.

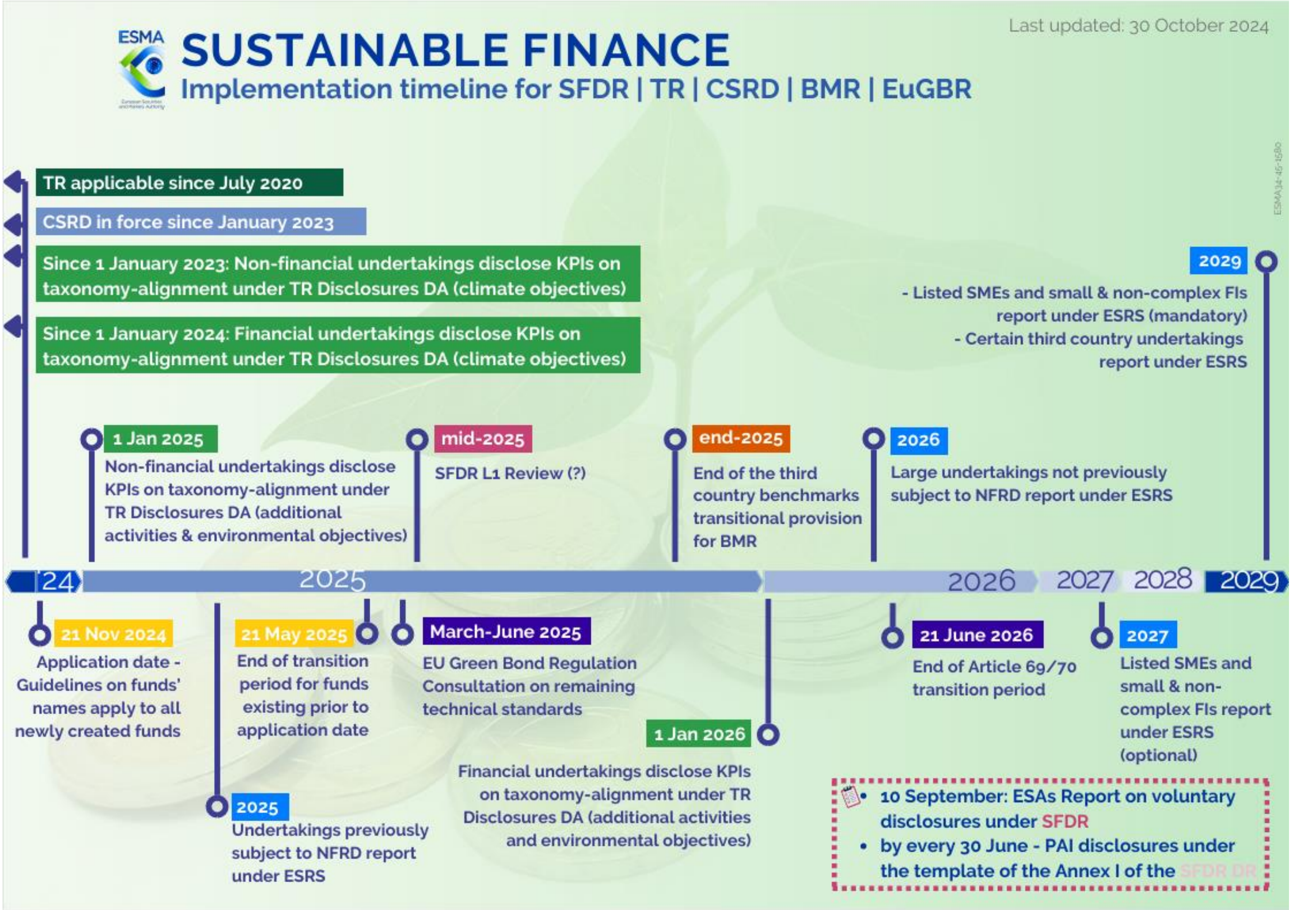
Conclusion

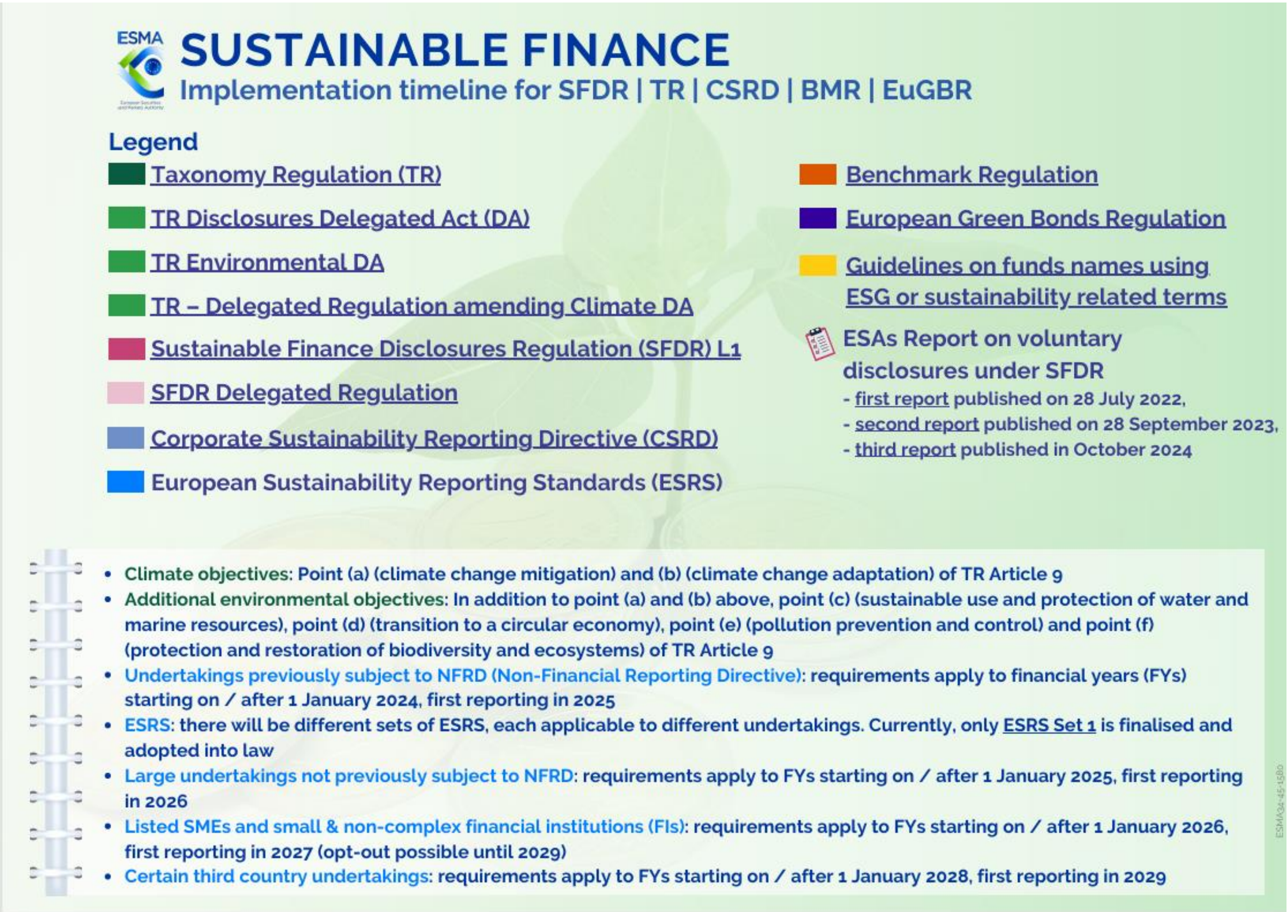
The accuracy of the assessments is subject to limitations and interpreting the results requires context and technical knowledge. Conclusions drawn from the assessments were that funds domiciled in northern Europe tend to be more exposed to companies subject to flood risks, while those domiciled in southern Europe are relatively more exposed to the consequences of water supply-and-demand imbalances.

ESMA updated sustainable finance timeline

ESMA released an updated version of its sustainable finance timeline.

It includes the application dates for guidelines on funds' names. It also proposes a date of mid-2025 for SFDR Level 1 review. You can read our article here summarising the proposed changes to SFDR Level 1.


ESMA
SUSTAINABLE FINANCE
Implementation timeline for SFDR | TR | CSRD | BMR | EuGBR
Last updated: 30 October 2024
TR applicable since July 2020
CSRD in force since January 2023
Since 1 January 2023: Non-financial undertakings disclose KPIs on taxonomy-alignment under TR Disclosures DA (climate objectives)
Since 1 January 2024: Financial undertakings disclose KPIs on taxonomy-alignment under TR Disclosures DA (climate objectives)
2029
- Listed SMEs and small & non-complex FIs report under ESRS (mandatory)
- Certain third country undertakings report under ESRS
1 Jan 2025
Non-financial undertakings disclose KPIs on taxonomy-alignment under TR Disclosures DA (additional activities & environmental objectives)
mid-2025
SFDR L1 Review (?)
end-2025
End of the third country benchmarks transitional provision for BMR
2026
Large undertakings not previously subject to NFRD report under ESRS
'24
2025
2026
2027
2028
2029
21 Nov 2024
Application date - Guidelines on funds' names apply to all newly created funds
21 May 2025
End of transition period for funds existing prior to application date
March-June 2025
EU Green Bond Regulation Consultation on remaining technical standards
21 June 2026
End of Article 69/70 transition period
2027
Listed SMEs and small & non-complex FIs report under ESRS (optional)
1 Jan 2026
Financial undertakings disclose KPIs on taxonomy-alignment under TR Disclosures DA (additional activities and environmental objectives)
2025
Undertakings previously subject to NFRD report under ESRS
• 10 September: ESAs Report on voluntary disclosures under SFDR
• by every 30 June - PAI disclosures under the template of the Annex I of the SFDR DR


ESMA
SUSTAINABLE FINANCE
Implementation timeline for SFDR | TR | CSRD | BMR | EuGBR
Legend
Taxonomy Regulation (TR)
TR Disclosures Delegated Act (DA)
TR Environmental DA
TR – Delegated Regulation amending Climate DA
Sustainable Finance Disclosures Regulation (SFDR) L1
SFDR Delegated Regulation
Corporate Sustainability Reporting Directive (CSRD)
European Sustainability Reporting Standards (ESRS)
Benchmark Regulation
European Green Bonds Regulation
Guidelines on funds names using ESG or sustainability related terms
ESAs Report on voluntary disclosures under SFDR
- first report published on 28 July 2022,
- second report published on 28 September 2023,
- third report published in October 2024
• Climate objectives: Point (a) (climate change mitigation) and (b) (climate change adaptation) of TR Article 9
• Additional environmental objectives: In addition to point (a) and (b) above, point (c) (sustainable use and protection of water and marine resources), point (d) (transition to a circular economy), point (e) (pollution prevention and control) and point (f) (protection and restoration of biodiversity and ecosystems) of TR Article 9
• Undertakings previously subject to NFRD (Non-Financial Reporting Directive): requirements apply to financial years (FYs) starting on / after 1 January 2024, first reporting in 2025
• ESRS: there will be different sets of ESRS, each applicable to different undertakings. Currently, only ESRS Set 1 is finalised and adopted into law
• Large undertakings not previously subject to NFRD: requirements apply to FYs starting on / after 1 January 2025, first reporting in 2026
• Listed SMEs and small & non-complex financial institutions (FIs): requirements apply to FYs starting on / after 1 January 2026, first reporting in 2027 (opt-out possible until 2029)
• Certain third country undertakings: requirements apply to FYs starting on / after 1 January 2028, first reporting in 2029

ELTIF regulatory technical standards published

The regulatory technical standard (**RTS**) under the amended European Long Term Investment Fund (**ELTIF**) Regulation which enables authorisation of open-ended ELTIFs was published in the EU's Official Journal on 25 October 2024, effective 26 October 2024.

The RTS deal with

- use of derivatives solely for hedging purposes;
- requirements relating to the redemption policy and use of LMTs;
- criteria for the determination of the level of liquid assets available for redemption;
- requirements for matching;
- valuation of assets being divested; and
- presentation formats of costs, calculation methodologies

You can read this article which summarises the amendments proposed by ESMA to the European Commission in April 2024. Those proposed RTS were adopted by the European Commission and approved by the Parliament and Council.

CBI application requirements

The CBI has updated its ELTIF application form to reflect the provisions of the RTS.

Open-ended ELTIFs marketed to professional investors and qualified investors should also have regard to the following CBI web-site sections: Authorisation Process for AIFs and Pre-submission process for AIFs.

In particular, where an AIFM wishes to establish either a Professional Investor ELTIF or a Qualified Investor ELTIF which are open-ended with limited liquidity and avail of the 24-hour authorisation process it must make a pre-submission to the CBI in good time prior to the requested authorisation and which addresses the following:

(i) the possibility of redemptions during the life of the ELTIF,

(ii) (where relevant) the possibility of redemptions which are more frequent than quarterly, and

(iii) (where relevant) the provision of a notice period of less than 3 months.

Once cleared, such an ELTIF can proceed to authorisation in the normal course.

Retail Investor ELTIFs should include details noted at (i)-(iii) above in its initial filing with the CBI.