



Matheson

Central Bank of Ireland Provides Guidance on Taxonomy Regulation Compliance and Filings

June 2022

The Central Bank of Ireland (“**Central Bank**”) has updated its guidance on how pre-contractual disclosures required under the Taxonomy Regulation are to be addressed in the period until 1 January 2023, when detailed requirements set out in regulatory technical standards (“**RTS**”) will apply. In updating its guidance, the Central Bank has taken into account the recent European Commission (“**Commission**”) Q&A responding to queries raised by the European Supervisory Authorities (“**ESAs**”). The Central Bank’s guidance outlines three options for funds within scope of the Taxonomy Regulation and the relevant Central Bank expectations in relation to those options, as set out in the table below.

| | Option / Scenario | Central Bank Expectation |
|--|---|---|
| <p>One option for: Funds not subject to Article 8 or Article 9 SFDR</p> | <p>Funds not subject to Article 8 or Article 9 SFDR</p> | <p>The pre-contractual document must include the following statement as per Article 7 of the Taxonomy Regulation:</p> <p><i>“The investments underlying this financial product do not take into account the EU criteria for environmentally sustainable economic activities.”</i></p> |

| | Option / Scenario | Central Bank Expectation |
|--|---|---|
| <p>Two options for:</p> <p>(A) Funds subject to Article 9 SFDR that invest in economic activities with an environmental objective</p> <p>(B) Funds subject to Article 8 SFDR that promote environmental characteristics</p> | <p>Where the manager <u>decides to take into account</u> the EU criteria for environmentally sustainable economic activities (ie, the criteria set out in the Taxonomy Regulation).</p> | <p>Funds subject to Article 9 SFDR must comply with Article 5 Taxonomy Regulation ie, they must include in their pre-contractual disclosures: (a) information on the environmental objective(s) included in the Taxonomy Regulation to which the underlying investments contribute; and (b) a description of how and to what extent the underlying investments are in Taxonomy-aligned investments.</p> <p>Funds subject to Article 8 SFDR that promote environmental characteristics must also include (a) and (b) above in their pre-contractual disclosures and also include the following statement:</p> <p><i>“The “do no significant harm” principle applies only to those investments underlying the financial product that take into account the EU criteria for environmentally sustainable economic activities.</i></p> <p><i>The investments underlying the remaining portion of this financial product do not take into account the EU criteria for environmentally sustainable economic activities.”</i></p> <p>To comply with (b) above, the Central Bank expects an explicit quantification of the extent of Taxonomy alignment, based on reliable data. The numerical disclosure may be accompanied by a qualitative clarification, but the disclosure should not include negative justifications (for instance, explaining a lack of alignment by a lack of data) and there should be no ambiguity regarding alignment with the Taxonomy.</p> <p>The disclosure should not refer to “incidental investment”.</p> <p>The use of complementary assessments and estimates is limited to exceptional cases and only where complete, reliable and timely information could not be obtained. Complementary assessments and estimates should only compensate for limited and specific parts of the desired data elements and should produce a prudent outcome. Managers should clearly explain the basis for their conclusions as well as the reasons for having to make such complementary assessments and estimates.</p> |

| Option / Scenario | Central Bank Expectation |
|--|---|
|  | <p>Where the manager <u>decides not to take into account</u> the EU criteria for environmentally sustainable economic activities (ie, the criteria set out in the Taxonomy Regulation).¹</p> <p>Funds subject to Article 9 SFDR must comply with Article 5 Taxonomy Regulation ie, they must include in their pre-contractual disclosures: (a) information on the environmental objective(s) included in the Taxonomy Regulation to which the underlying investments contribute; and (b) a description of how and to what extent the underlying investments are in Taxonomy-aligned investments.</p> <p>Funds subject to Article 8 SFDR that promote environmental characteristics must also include (a) and (b) above in their pre-contractual disclosures and also include the following statement:</p> <p><i>“The “do no significant harm” principle applies only to those investments underlying the financial product that take into account the EU criteria for environmentally sustainable economic activities.</i></p> <p><i>The investments underlying the remaining portion of this financial product do not take into account the EU criteria for environmentally sustainable economic activities.”</i></p> <p>To comply with (b) above, the pre-contractual disclosures must indicate zero Taxonomy-aligned investments. The disclosure should not include negative justifications (for instance, explaining a lack of alignment by a lack of data) and there should be no ambiguity regarding alignment with the Taxonomy. (See Note on Article 6 Taxonomy Regulation Statement below.)</p> <p>The disclosure should not refer to “incidental investment”.</p> |

¹ The Central Bank has clarified that this includes where the manager fails to collect data on the environmental objective(s) set out in Article 9 of the Taxonomy Regulation and on how and to what extent the investments underlying the fund are in economic activities that qualify as environmentally sustainable under Article 3 of the Taxonomy Regulation.

Note on Article 6 Taxonomy Regulation Statement

Article 6 of the Taxonomy Regulation requires funds subject to Article 8 SFDR that promote environmental characteristics to include the following statement in pre-contractual disclosures:

“The “do no significant harm” principle applies only to those investments underlying the financial product that take into account the EU criteria for environmentally sustainable economic activities.

The investments underlying the remaining portion of this financial product do not take into account the EU criteria for environmentally sustainable economic activities.”

Where a fund indicates zero investment Taxonomy-aligned investments, it would appear contradictory to refer to *“those investments underlying the financial product that take into account the EU criteria for environmentally sustainable economic activities”* and so industry had argued that a modified form of this statement should apply in these circumstances. Having consulted with other national competent authorities, the Central Bank is of the view that the Article 6 Taxonomy Regulation statement must be included in the pre-contractual disclosures of an Article 8 SFDR fund that promotes environmental characteristics but does not take into account the EU criteria for environmentally sustainable economic activities or where the manager fails to collect data on the environmental objective(s). In this scenario, the proportion of investments that take into account the EU criteria for environmentally sustainable economic activities would be 0% and the “remaining portion” would be 100% of the fund’s portfolio.

Timing of Changes to Disclosures

The Central Bank has clarified that it expects updates / amendments to pre-contractual documents to be carried out:

- at the earliest available opportunity;
- over the normal course of business; or
- at the very latest, by 1 January 2023.

The Central Bank has confirmed that there will be a fast-track process for filings relating to compliance with the Taxonomy Regulation and the SFDR RTS, but the Central Bank has yet to confirm a filing deadline or further details. We will continue to keep our clients informed of further developments in relation to this process.

Please get in touch with your usual Asset Management and Investment Funds Department contact or any of the contacts listed in this publication should you require further information in relation to the material referred to in this update.

Full details of the Asset Management and Investment Funds Department, together with further updates, articles and briefing notes written by members of the Asset Management and Investment Funds team, can be accessed at www.matheson.com.



Tara Doyle

Partner

T +353 1 232 2221

E tara.doyle@matheson.com



Michael Jackson

Managing Partner

T +353 1 232 2000

E michael.jackson@matheson.com



Dualta Counihan

Partner

T +353 1 232 2451

E dualta.counihan@matheson.com



Shay Lydon

Partner

T +353 1 232 2735

E shay.lydon@matheson.com



Philip Lovegrove

Partner

T +353 1 232 2538

E philip.lovegrove@matheson.com



Liam Collins

Partner

T +353 1 232 2195

E liam.collins@matheson.com



Elizabeth Grace

Partner

T +353 1 232 2104

E elizabeth.grace@matheson.com



Oisín McClenaghan

Partner

T +353 1 232 2227

E oisín.mcclenaghan@matheson.com



Michelle Ridge

Partner

T +353 1 232 2758

E michelle.ridge@matheson.com



Barry O'Connor

Partner

T +353 1 232 2488

E barry.oconnor@matheson.com



Donal O'Byrne

Partner

T +353 1 232 2057

E donal.o'byrne@matheson.com



Catriona Cole

Partner

T +353 1 232 2458

E catriona.cole@matheson.com



Anthony Gaskin

Partner

T +353 1 232 3043

E anthony.gaskin@matheson.com



Brónagh Maher

Professional Support Lawyer

T +353 1 232 3757

E bronagh.maher@matheson.com

This material is provided for general information purposes only and does not purport to cover every aspect of the themes and subject matter discussed, nor is it intended to provide, and does not constitute, legal or any other advice on any particular matter. The information in this document is provided subject to the Legal Terms and Liability Disclaimer contained on the Matheson website.

Copyright © Matheson

Matheson

This Matheson LLP (“Matheson”) material contains general information about Irish law and about our legal services. This material is not intended to provide, and does not constitute or comprise, legal advice on any particular matter and is provided for general information purposes only. You should not act or refrain from acting on the basis of any information contained in this material, without seeking appropriate legal or other professional advice.

This document is confidential and commercially sensitive and is submitted to you on a confidential basis, solely to facilitate the decision whether or not to appoint Matheson to provide legal services to you. It is not to be copied, referred to or disclosed, in whole or part (save for your own internal purposes in connection with the consideration of this submission), without our prior written consent. Matheson retains ownership of the document and all rights in it, including ownership of copyright.

DUBLIN

70 Sir John Rogerson's Quay,
Dublin 2
Ireland

T: +353 1 232 2000
E: dublin@matheson.com

CORK

Penrose One,
Renrose Dock,
Cork, T23KW81

T: +353 21 465 8200
E: cork@matheson.com

LONDON

1 Love Lane
London EC2N 7JN
England

T: +44 20 7614 5670
E: london@matheson.com

NEW YORK

200 Park Avenue
New York, NY 10166
United States

T: +1 646 354 6582
E: newyork@matheson.com

PALO ALTO

530 Lytton Avenue
Palo Alto, CA 94301
United States

T: +1 650 617 3351
E: paloalto@matheson.com

SAN FRANCISCO

156 2nd Street
San Francisco CA 94105
United States

T: +1 650 617 3351
E: sf@matheson.com