

Regulatory Newsletter Solutional

DEVELOPMENTS IN ASSET MANAGEMENT LAWS AND REGULATION | Q4 2021

Introduction

This quarterly newsletter presents the technical and regulatory developments that are related to financial and regulatory reporting relevant to investment firms.

In this issue

- Sustainability reporting
- SFDR Level 2 postponed
- Amending Directives 2011/61/EU (AIFMD) and 2009/65/EC (UCITS)
- European Supervisory Authorities RTS



Solutional
Value through expertise

Regulatory Newsletter | Q4-2021

General

European Banking Authority on IFRS 9 implementation by EU institutions

On 24 November 2021, the European Banking Authority (EBA) published a report summarising the findings from their monitoring activities on the IFRS 9 'Financial Instruments' implementation by EU institutions, with particular attention to the expected credit losses (ECL) measurement. The main observations in the report are:

- Divergence in some accounting practices, due to the inherent flexibility embedded in the IFRS 9 standard and the limited experience to date.
- The COVID-19 pandemic pushed IFRS 9 models outside their boundaries, thereby increasing the use of manual adjustments or overlays, with divergent results on the final ECL amount.
- Some practices, particularly in the context of COVID-19, deserve further scrutiny from supervisors in particular to ensure a timely assessment of significant increase in credit risk.

IFRS

Sustainability reporting

On 3 November 2021 during COP26, the UN climate change conference, the IFRS Foundation Trustees announced the formation of a new International Sustainability Standards Board (ISSB) to develop a comprehensive global baseline of sustainability disclosure standards.

As part of this formation, the Trustees created the Technical Readiness Working Group (TRWG) back in March 2021. This group was formed by the IFRS Foundation Trustees to prepare for the ISSB. Representatives of the Climate Disclosure Standards Board (CDSB), the International Accounting Standards Board (IASB), the Financial Stability Board's Task Force on Climate-related Financial Disclosures (TCFD), the Value Reporting Foundation (VRF) and the World Economic Forum (Forum), supported by the International Organization of

Securities Commissions (IOSCO) and International Public Sector Accounting Standards Board (IPSASB) consolidated key aspects of these organizations work into one unified set of recommendations for the ISSB to be considered. This joint effort resulted in the publication of the 'Climate-related Disclosures Prototype' and 'General Requirements for Disclosure of Sustainability-related Financial Information Prototype'.

The prototypes are for informational purposes only and aimed at providing the market with a sense of direction. The ISSB will consider the recommendations and determine next steps.

Editorial corrections IASB

In October 2021, the IASB posted an editorial correction related to the discussion paper 'Disclosure of Accounting Policies (Amendments to IAS 1 and IFRS Practice Statement 2)'.

The editorial corrections relate to minor inaccuracies in the discussion paper.

EU endorsements

On 19 November 2021, the EU endorsed IFRS 17 'Insurance contracts' with EU effective date as of 1 January 2023. The effective date is the same as the effective date of the IASB.

Dutch GAAP

RJ-Uiting 2021-13

In 2020, the EU Taxonomy Regulation (2020/852) entered into force in the European Union. Based on this regulation, additional mandatory disclosures in the non-financial statement section of the management report. This is applicable to large public-interest entities as of the reporting year 2021. In RJ-Uiting 2021-13, the Dutch Council for Annual Reporting (RJ) provides further information about the new European requirements.

The EU Taxonomy Regulation aims to stimulate sustainable financing and investments and to increase the insight. The developed EU taxonomy includes activities which are classified



as environmentally sustainable ('green') and requires the disclosure of information about the activities, in particular to investors. The core of this EU Taxonomy Regulation is as follows:

- Article 8 (paragraph 1) of the EU Taxonomy Regulation states that the non-financial statement must also provide information on how and to what extent the company's activities are related to environmentally sustainable activities as defined in the EU taxonomy.
- Article 8 (paragraph 2) of the EU Taxonomy Regulation determines which prescribed critical performance indicators (KPIs) must be reported. This concerns the share of sustainable activities in turnover, capital expenditure and operational expenditure.
- The requirements of the EU Taxonomy Regulation are further elaborated in a number of delegated regulations to be adopted by the European Commission.

The European Commission published (the draft of) the European Delegated Regulation for the implementation of Article 8 of the EU Taxonomy Regulation in July 2021.

The European Delegated Regulation describes when activities qualify as economic activities eligible for the EU taxonomy. In addition, the European Delegated Regulation sets out in detail how to determine whether there are environmentally sustainable economic activities that are aligned with the EU taxonomy. When economic activities meet certain technical screening criteria described in the EU Taxonomy Regulation, these activities can be considered sustainable ('green').

European Delegated Regulation will come into effect in phases:

- As of 1 January 2022, large public-interest entities will have to report in the non-financial statement on the share of eligible and non-eligible economic activities that can contribute to the objectives of climate change mitigation or climate change adaptation in their total turnover, capital expenditure and operational expenditure.

- As of 1 January 2023, the non-financial statement will have to report KPIs on the share of taxonomy-aligned economic activities that can contribute to the climate change objectives, taking into account the requirements of the European Delegated Regulation.

Note that the EU Taxonomy Regulation differs from the SFDR. The Taxonomy sets out criteria for determining if an activity is environmentally sustainable, including whether the activity contributes to, or does not significantly harm, one or more specified environmental objectives. The EU Taxonomy Regulation requires further disclosures which need to be made in addition to those set out in the SFDR.

Bill on a more balanced male - female ratio at the top

On 26 October 2021, the new bill regarding a more balanced male-female ratio in the boards of the large private (B.V.) and public (N.V.) limited companies was published in the official journal of the Kingdom of the Netherlands. The bill adds three new articles in the Dutch Civil Code (het Burgelijk Wetboek (BW)).

Article 2:142b BW is for entities traded on regulated markets as meant in article 1.1 of the Dutch Financial Supervision Act (WFT). This article introduces a quota to achieve a balanced male-female ratio in the board.

Articles 2:166 BW (for NVs) and 2:276 BW (for BVs) introduce an obligation for large companies to set 'appropriate' and 'ambitious' goals in the form of a target figure, in order to achieve a more balanced ratio between the number of men and women on the management board and the supervisory board. Large companies are required to draw up a plan to achieve the targets set and to report on this in the annual board report and to the Social and Economic Council (SER).

AIFMD Annex IV

On 25 November, the highly anticipated review of the Alternative Investment Fund Managers Directive (AIFMD) by the European Commission (EC) has been published. The



impact of the proposed changes of the directive for the Annex IV reporting appear to be limited. The exact impact can't be determined at this time as the EC proposed ESMA to draft new Regulatory Technical Standards (RTS) for Annex IV reporting. The European Parliament (EP) is expected to approve the proposal within one year. Following the approval, ESMA will be required to submit the draft RTS within 36 months.

UCITS

Also on 25 November, the EC published a proposal for amending Directive 2009/65/EC for UCITS. Article 20a proposes to introduce a periodic supervisory reporting obligation for management companies on the markets and instruments in which they trade on behalf of the UCITS. A new Article 20b proposes mandating ESMA, in cooperation with other ESAs and the ECB, to produce a feasibility report on seeking efficiencies in the supervisory reporting space. The report would inform about the potential design of a supervisory reporting template for the UCITS management companies, and ESMA is required to develop regulatory technical standards and draft implementing technical standards on the basis of its findings.

The deadline for the publication of the draft regulatory technical standards is the same as for the AIF funds mentioned under AIFMD Annex IV.

Statistical Reporting

MESREP

DNB published on 13 December 2021 an updated taxonomy, version 2.1.0, which replaced version 2.0.0. Significant changes have been processed in this update. The following has been adjusted:

- The names of several forms have been adjusted to highlight that unlisted shares should also be included in a set of forms within MESREP.
- Minor name adjustments of instruments and columns which were stated incorrect

in the forms or which have been adjusted for consistency purposes.

- Credit default swaps have been moved from forms T10.01, T10.02, T10.03, T10.04, T10.09 and T10.10 to forms T10.07, T10.08 and T10.12 to be reported together with the forward instruments.
- Several forms have been reclassified in the calculation of form T11.01 by assigning these to a different row.
- Several validation rules have been adjusted.

The detailed list of the processed adjustments has been published on the DNB website.

BSI

On 5 October 2021, the DNB published an updated taxonomy (version 2.0.2.) for the Balance Sheet Items (BSI) report. Compared to version 2.0.1, in version 2.0.2 an error in the reference to the country list for forms 9013 and 9017 has been fixed.

SOLVENCY II (TPT/QRT)

No relevant reporting updates during the third quarter of 2021.

FTK

As mentioned in the Q3-2021 newsletter, the DNB published on 30 September 2021 the updated FTK taxonomy 2.4.0. applicable from 1 January 2022. A bugfix was released on 2 November 2021 for the 2.4.0. due to an error in the linkbase. No substantive changes were made.

MMFR

No relevant reporting updates during the fourth quarter of 2021.



EMIR

During the fourth quarter of 2021, the ESMA published an updated Q&A, a Consultation Paper 'Report on highly liquid financial instruments with regards to the investment policy of central counterparties' and a 'Review paper of the clearing thresholds under EMIR'. There were no relevant reporting updates based on these publications.

MIFID

The final guidelines on the MiFID II/MiFIR obligations on market data were published in August 2021. As of 1 January 2022 the ESMA will carry out supervision on trading venues, approved publication arrangements (APAs), consolidated tape providers (CTPs) and systematic internalisers¹, as stipulated in Regulation (EU) No 2019/2175. Although the guidelines are not addressed to ESMA, the ESMA is the responsible competent authority for APAs and CTPs.

PRIIPS

The European Supervisory Authorities (ESAs) opened a call for evidence regarding Packaged retail and insurance-based investment products (PRIIPs) regulation on 21 October 2021. The input provided will feed into the ESAs' technical advice to the European Commission on a review of the Key Information Document (KID) for PRIIPs.

IFR/IFD

After a delay of almost five months, the EU Investment Firm Directive (IFD) is fully implemented in the Dutch Financial Supervision Act (WFT) as of 26 November 2021.

As mentioned in our previous newsletters, the Investment Firm Regulation (IFR) and IFD both came into force on 26 June 2021 as a directly

applicable EU regulation. This was also clarified by DNB in July 2021 as they were expecting managers of investment institutions and UCITS to use the new reporting templates for the third quarter of 2021.

SFDR

On 22 October 2021, the European Supervisory Authorities (ESAs) delivered their final report with Regulatory Technical Standards (RTS) regarding disclosures under the Sustainable Finance Disclosure Regulation (SFDR). The disclosures relate to financial products that use sustainable investments that contribute to environmental objectives.

The RTS aims to:

- provide disclosures to end investors regarding the investments of financial products in environmentally sustainable economic activities, providing them with comparable information to make informed investment choices.
- establish a single rulebook for sustainability disclosures under the SFDR and the Taxonomy Regulation.

The two main proposals in the report are:

1. For products under Articles 5 and 6 of the Taxonomy Regulation:
 - inclusion of pre-contractual and periodic disclosures that identify the environmental objectives to which the product contributes and to what extent the product's investments are aligned with the EU Taxonomy.

For measuring to what extent activities funded by the product are aligned with the EU taxonomy, the proposals consist of two elements:

- a. two graphs showing the taxonomy-alignment of investments of the financial product based on a specified

¹ An investment firm which, on an organised, frequent systematic and substantial basis deals on own account outside a regulated market, an MTF or an OTF without a multilateral system.



methodology that calculates that alignment.

- b. an assurance provided by an auditor or a review by a third party that the economic activities funded by the product that qualify as environmentally sustainable are compliant with the detailed criteria of the Taxonomy Regulation.

2. For pre-contractual and periodic disclosures: inclusion of annexes with amendments to the mandatory templates for financial products, so that they include additional disclosures for Article 5 and Article 6 products under the Taxonomy Regulation.

Treatment of Sovereign Bonds

The ESAs propose a dual approach regarding a specific issue, the lack of a reliable methodology to derive taxonomy-aligned activities funded by sovereign exposures. One approach including sovereign exposures and one approach excluding sovereign exposures from the calculation.

To protect investors from the risk of greenwashing, the draft RTS contain a graph which includes all the investments of the financial product in the calculation. As there is no appropriate methodology to assess the taxonomy-alignment of sovereign bonds, the ESAs added a second graph showing the taxonomy-alignment of the financial product where all sovereign exposures are excluded from the calculation.

The European Commission will decide whether to endorse the RTS. The Commission has informed the European Parliament and Council that it intends to incorporate all the SFDR RTS.

SFDR Level 2 postponed

The European Commission postponed the application date for the SFDR RTS (Level 2). The application date has been postponed from 1 July 2022 to 1 January 2023.

Additional time is required for the adoption and implementation process due to the length and technical detail of the draft RTS submitted by the ESA's.



Disclaimer

Every effort is made to provide accurate and complete information in publications by Solutional. However, Solutional cannot guarantee that there will be no errors. Solutional makes no claims, promises or guarantees about the accuracy, completeness, or adequacy of the contents of newsletters and expressly disclaims liability for errors and omissions in the contents of any publication.

Neither Solutional, nor its employees make any warranty, expressed or implied or statutory, including but not limited to the warranties of noninfringement of third party rights, title, and the warranties of merchantability and fitness for a particular purpose with respect to content available from newsletters. Neither does Solutional assume any legal liability for any direct, indirect or any other loss or damage of any kind for the accuracy, completeness, or usefulness of any information, product, or process disclosed herein, and do not represent that use of such information, product, or process would not infringe on privately owned rights.



Solutional
Value through expertise

Regulatory Newsletter | Q4-2021