

# REGULATORY WATCH

## Luxembourg

February-March 2023

**DLT guidelines**

**SFDR**

*Data collection exercise for IFMs*

**DORA**

*The objectives of the final act*

**Greenwashing**

*The regulators will specify the definition*

**EMIR Refit**

*New Guidelines on reporting*

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## DLT guidelines - News

On December 15th 2022, the European Securities and Markets Authority (ESMA) released new guidelines and Q&As regarding the DLT Pilot Regime Regulation, which governs the use of distributed ledger technology (DLT) for market infrastructures. The final report includes guidelines for market participants on how to apply for permission to operate any type of DLT market infrastructures, such as DLT multilateral trading facilities, DLT settlement systems, and DLT trading and settlement systems. The next day, ESMA published its first set of questions and answers on the implementation of the DLT Pilot Regime Regulation.

The Final Report also includes templates for DLT infrastructure operators to request limited exemptions from certain requirements under MiFIR, MiFID II, or CSDR, if they meet certain conditions.

The guidelines will become effective on March 23rd, 2023, and national competent authorities are required to publish instructions on how to submit the required information.

## SFDR data collection exercise for investment fund managers (IFMs)

The CSSF has launched the first part of a data collection exercise regarding sustainability-related disclosures in the financial services sector (SFDR) for investment fund managers (IFMs). The purpose of the exercise is to gather information on the organizational arrangements of IFMs and their compliance with SFDR and Commission Delegated Regulation (EU) 2022/1288.

The scope of the data collection is limited to IFMs that are domiciled in Luxembourg and includes UCITS management companies, investment companies without a management company, authorized AIFMs, managers of qualifying venture capital funds, and managers of qualifying social entrepreneurship funds.

IFMs are required to complete a questionnaire via a new eDesk module, "SFDR-IFM disclosures," starting from February 2, 2023, and the deadline for submission is March 2, 2023. The questionnaire must be submitted by an eDesk user linked to the IFM and instructions for creating a user account can be found on the eDesk portal homepage.

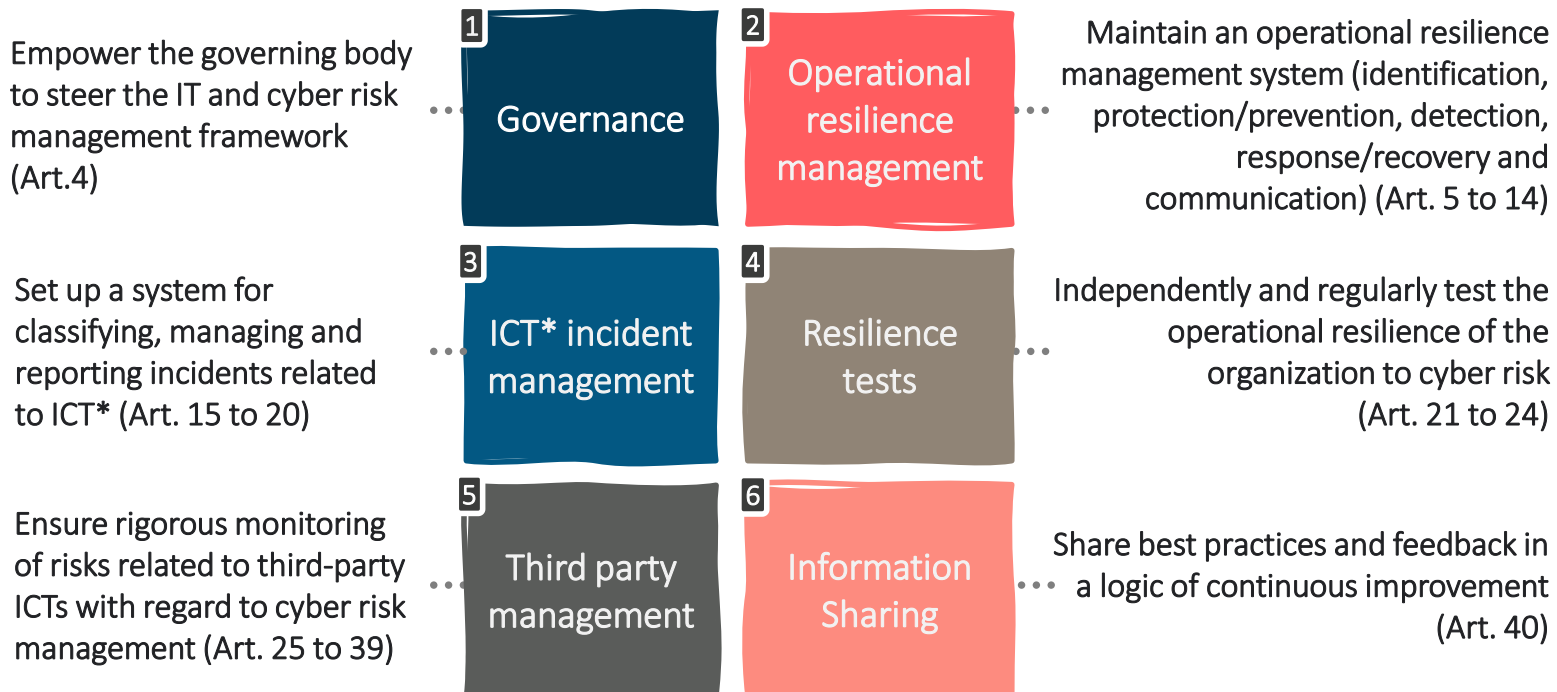
In case of any changes, IFMs are responsible for keeping the information up-to-date and can use the update function available in the eDesk module.

# DORA - Digital Operational Resilience Act

The final act was signed on 14 December 2022 by the European Parliament and the Council.

|                   |   |
|-------------------|---|
| <b>Objectives</b> | <p>DORA aims to strengthen the digital side of operational resilience through continuous monitoring, reporting and testing of network and information system security by:</p> <ul style="list-style-type: none"> <li>• densifying and harmonizing the rules of EU member states on the resilience of the financial sector in the face of major incidents linked to ICT*</li> <li>• Defining targeted monitoring measures to mitigate the risks arising from the growing reliance on ICT* systems and service providers for critical operations;</li> <li>• Preventing and identifying any shortcomings or deficiencies and thus quickly adopting corrective measures.</li> <li>• Enabling the financial and insurance sectors to take advantage of the opportunities offered by technology and innovation while mitigating the new associated risks.</li> </ul> |
| <b>Scope</b>      | <ul style="list-style-type: none"> <li>• Banking sector in the broad sense (EC, EI, EP, EME, etc.)</li> <li>• Insurance and reinsurance organizations and intermediaries</li> <li>• Infrastructures (including ICT providers*)</li> <li>• Others (rating agencies, information providers, etc.)</li> </ul>  |

## 6 pillars covered by the DORA regulation



\*ICT: Information and Communication Technologies

### How Aurexia can help you

- Provide an overview of DORA requirements on the resilience of critical entities
- Identify concrete actions to be taken to achieve compliance (gap analysis, impact assessment)
- Design a target operating model and/ or a risk policy to manage cyber risks



# Greenwashing is one of the main hurdle for ESG investment world

## ESG regulation will specify the greenwashing definition

*Before introducing the notion of greenwashing, many questions are not addressed yet. The different Nation Competent Authority (“NCA”) across Europe are defining what could be included into SFDR (Sustainable Finance Disclosure Regulation). The AMF (French regulator) suggested to introduce minimum sustainability rules for funds classified under the article 8 or 9. The AMF also suggested to excluded all companies exposed to nuclear activity without distinction. The question of this exclusion could be larger than initially expected by the regulator, what is going on, for example, for pharmaceutical company?*

The demand for sustainability-related products combined with the rapid evolution of the regulation creates many questions regarding the real impact of these products. These products classified as sustainable must contribute positively to climate transition. In this context, the question of green washing increased, the European Commission (“EC”) requested each ESAs, separately but in a coordinated manner, to provide input on greenwashing risks and occurrences in the EU financial sector and on the supervisory actions taken and challenges faced to address those risks.

The European Commission launched a survey named “ESAs Call for evidence on better understanding greenwashing” with closing submission as of 10<sup>th</sup> January 2023. The public conclusion is expected before the end of June 2023.

### Greenwashing, a term to define a complex phenomenon

Before initiating action plan, we must define the term “Greenwashing”; the term “greenwashing” is used as referring to sustainability-related claims on environmental, social and/or governance aspects.

Greenwashing is a complex phenomenon which can involve or impact a multitude of financial market

participants and potentially affects all sectors in the sustainable value chain. This question is also crucial for the implementation of CSRD (Corporate Sustainability Regulation Disclosure).

### Financial Market participants are three time exposed

The role market participants can play in greenwashing, which could include three possible categories: **trigger**, **spreader** and **receiver of sustainability-related chain**.

Sustainability-related claims could apply at entity level, product level or service level (e.g. in relation to the integration of sustainability-related preferences to the provision of financial advice).

Obtain an European definition of greenwashing is essential for all market participants. Above the question of SFDR classification, if each NCAs introduced their own rules, the financial market participants could be facing a mis-selling issue and a potential fragmented market. The question is debating, for example, in U.S.A, U.K or Singapore. The UK introduces concrete labels such as impact, focus and improver and will come into force with a general anti-greenwashing rule.

### How Aurexia can help you

- Provide an overview of SFDR definition by countries (Article 8 and 9)
- Identify concrete actions to be taken to achieve compliance with potential national misinterpretations (fund domiciliation and client fiscal residence)
- Benchmarking of your current disclosures against recommendations and identifying gaps in your disclosures, processes or controls

Reference : ESAs Call for evidence on better understanding greenwashing / EBF response to the ESAs Call for evidence on better understanding greenwashing / ABBL’s answers PoV.

## EMIR Refit

### *ESMA provides a guideline on reporting and data management under the amended EMIR rules*

*The objective of these new guidelines is to enforce harmonization and to create a certain standardization about EMIR statements. The EU's financial markets regulator and supervisor wants to continue to put in place an effective supervision of the systemic risk that weighs in Europe.*

*The EU body points to the cost savings that harmonization will bring in a difficult economic window where pressure on margins is increasing.*

The guidelines provide clarification on the following aspects :

- Transition to reporting under the new rules
- The numbers of reportable derivatives
- Intragroup derivatives exemption from reporting
- Delegation of reporting and allocation of responsibility for reporting
- Reporting logic and the population of reporting fields
- Reporting of different types of derivatives
- Ensuring data quality by the counterparties and the TRs
- Construction of the Trade State Report and reconciliation of derivatives by the TRs
- Data Access

The report consists of several sections. For each of these sections, there is a focus on the consultation document and the assessment of the feedback that is taken into account those that have not been included. The first part focuses on derivatives and how they should be constituted and the specific amount of information to be communicated about them.

The second part focuses on the transitional provisions in relation to the numbers of derivatives to be reported and the exemptions from reporting. The second part focuses on the transitional provisions in relation to the number of derivatives to be reported and the exemptions from reporting. It also provides details on the life cycle management of derivatives and the reporting schedule to be followed.

The third part refers to the feedback on the declaration of specific types of derivatives and the feedback on use cases. Section 3.4 summarizes the use cases related to the population of EMIR reportable fields tables.

Finally, the last section focuses on clarifications related to data management, including the constructions of the state of trade report by TRs.

To keep the technical aspects of the data quality requirements relevant and correctly applied, ESMA updates the validation rules when necessary or appropriate. When the validation rules are updated, ESMA specifies the effective day of application of the updated validation rules and the TRs should ensure that they implement the changes in the specified timeframe and start performing the verification checks with the updated validation rules on the designated date of application.

#### How Aurexia can help you

1. Adapt current reporting systems to reach current standardization
2. Audit current processes and propose improvements to meet ESMA expectations

# CSSF Circular 22/825

## Data collection on inactive accounts and inactive safe deposit boxes

The CSSF has issued its CSSF Circular N°22/825 on data collection on inactive accounts and inactive safe deposit boxes which contains as annex the data collection template to be used for the reporting to be made by the establishments. The CSSF will act as single point of contact for the purpose of this reporting and once that information is collected by the CSSF, it will be transmitted to the Administration des Contributions Directes.

This circular applies only to credit institutions established in Luxembourg, Luxembourg branches of EU and third country credit institutions and to POST Luxembourg.

The first reporting to CSSF and the Administration des Contributions Directes shall reflect the situation as of 31 December of the reference year, and transmitted by 28 February 2023 at the latest.

### ❖ Will inactive accounts only showing debit balances need to be reported to the CSSF?

Inactive account(s) of an accountholder showing a debit balance and which cannot be set-off against inactive account(s) of the same accountholder showing a credit balance will not need to be reported to the CSSF.

### ❖ Will the CSSF Circular N°22/825 on data collection on inactive accounts and inactive safe deposit boxes contain reporting examples?

The CSSF Circular N°22/825 on data collection on inactive accounts and inactive safe deposit boxes does not contain reporting examples. However, the ABBL has been able to discuss with CSSF representatives a certain number of examples of reporting cases that are provided below.

### ❖ How the reporting should be submitted to the CSSF?

The Annex must be submitted electronically to the CSSF. Procedures and explanations on the practical modalities regarding the preparation and transmission of the data collection related to the Law are made available to institutions via the eDesk portal of the CSSF.

### What type of information shall be integrated in the reporting?

As described in the Annex, Credit Institutions must provide specific information related to holders of inactive accounts and safe deposit boxes, as well as their total balances opened with the Bank as of the 31 December of each year. In-scope entities will also demonstrate their implementation of the Law of 30 March 2022 requirements.

#### How Aurexia can help you

- Provide an overview of Circular 22/825 requirements for all accounts (cash, saving, securities, fiduciary, as well as any other accounts opened with an establishment asset service providers)
- Identify concrete actions to be taken to achieve compliance (gap analysis, impact assessment)
- Identify impacted current processes and areas of risks
- Design a target operating model for IT development (implementation roadmap and milestones)
- Implementation of mitigation controls and procedures



## Regtech Corner: GREENOMY



### Greenomy at a glance..

|             |          |
|-------------|----------|
| Founded     | 2020     |
| Headquarter | Brussels |
| Employees   | 45       |

Founder & CEO



Alexander Stevens

Founder & Head of sustainability



Sarah Lokman



Founded in 2020 by Alexander Stevens, Greenomy helps corporates, credit institutions, and asset managers comply with new **EU sustainable finance legislation by digitalizing the data capturing and reporting process**. The Greenomy platform's outcome and mission is to facilitate the redirection of capital toward sustainable activities, speeding up the transition to a climate-neutral economy.

The Greenomy tool is a SaaS which enables corporates, asset managers, and credit institutions to upload their sustainability data onto Greenomy's online platform.

Greenomy adheres to the highest standards of data protection and privacy. As such, we are actively within an ISO 27001 and SOC 2 program. They strictly align with EU GDPR standards and are regularly audited both internally and externally.

#### HOW CAN GREENOMY HELP YOU?

Greenomy offers Companies and Financial Institutions a **one-stop platform to report and comply with the new EU Sustainable Finance Reporting regulations**.

The company provides three main type of products, The Greenomy Company Portal allows companies to easily perform their activity

screening, calculating their EU Taxonomy eligibility. The Investor Portal empowers **asset managers and insurance companies to integrate sustainability into the heart of their products** and ultimately ensures the flow of funds towards sustainable activities. The Greenomy Lender Portal allows Credit Institutions to measure, disclose, and improve sustainability within their individual loans and their banking books, channeling the redirection of financing towards sustainable activities.

#### DID YOU KNOW?

Greenomy already has a fully functioning product within the EU that operates a company, investor, and lender portal. It is currently being used by EU financial market participants to obtain their sustainable finance disclosure reports for the EU Taxonomy/SFDR/NFRD.

**Greenomy is expanding its product to gradually integrate other non-EU Green Taxonomies, such as the upcoming UK Taxonomy.**



# Aurexia

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