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Luxembourg CSSF Introduces First Sanction Regarding SFDR

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On 15 October 2024, the Luxembourg Commission de Surveillance du Secteur Financier (the "**CSSF**") imposed a fine of EUR 56,500 against a fund manager, Aviva Investors Luxembourg S.A. (the "**Manager**"), with regards to the Sustainable Finance Disclosure Regulation (EU) 2019/2088 (the "**SFDR**"). This marked the CSSF's first ever sanction with regards to the SFDR.

Background

The CSSF carried out an on-site inspection of the Manager during which the CSSF identified breaches in the Manager's internal governance. The breaches concerned five sub-funds of an investment fund under the Manager's management (the "**Fund**") which the Manager classified as Article 8 funds under the SFDR. One of the sub-funds failed to comply with disclosures in the pre-contractual disclosures made in accordance with Article 8 of the SFDR by failing to make sure that controls ensured investment exclusion thresholds were met.

The other sub-funds failed to comply with statements made in the Fund's prospectuses by not ensuring that the funds were "primarily targeting" United Nation sustainable development goals. The CSSF therefore concluded that the Manager was in breach of the requirement to have sound administrative procedures and adequate internal control mechanisms[1] and failed to act in the best interests of the UCITS.[2]

In determining the type and amount of sanction to impose, the CSSF considered, in accordance with Article 149a of the Law of 2010 and in line with the principle of proportionality, (i) the seriousness and duration of the breaches by the Manager, (ii) the conduct and prior record of the Manager and (iii) the Manager's willingness to cooperate with the CSSF. The CSSF also considered the Manager's implementation of measures to remedy the breaches.

Significance of the CSSF's first sanction regarding the SFDR

Although the CSSF's first administrative fine of EUR 56,500 with regards to the SFDR is not substantial financially, the mere fact that the CSSF has imposed a sanction is significant given the attraction and status of Luxembourg for asset managers in Europe.

Furthermore, whilst the CSSF's fine against the Manager focuses on Article 8 funds for retail investors, given the increased focus on ESG in the asset management sector and the lack of precedent as to what the CSSF will focus on with regards to SFDR compliance, fund managers looking to launch any Luxembourg domiciled funds should be mindful that the CSSF is taking a more stringent approach to compliance with the SFDR and is willing to take enforcement action against breaches of regulatory obligations.

Fund managers should also note that the EUR 56,500 fine is not a fixed amount and future sanctions imposed by the CSSF could be more significant depending on the nature of the breaches in question.

For further information, please contact us at ukreg@proskauer.com.

[1] As set out in Article 10(2) of the CSSF Regulation No 10-04 and supplemented by Article 109(1)(a) of the amended Law of 17 December 2010 relating to undertakings for collective investment (the "Law of 2010").

[2] As set out in Article 26(3) of the CSSF Regulation No 10-04 and supplemented by Articles 111(a) and (b) of the Law of 2010).

See original.

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