

CREDIT FUNDS

# European Regulatory Updates



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## ESG: SFDR Update

### SFDR REVIEW

- SFDR is currently being reviewed.
- A consultation was launched in Q4 2023 and a further call for input was published in Q2 2025.

### POSSIBLE PROPOSALS

- The EU Platform on Sustainable Finance has proposed new SFDR regime recommendations, introducing three product categories: Sustainable, Transition, and ESG Collection.
- Sustainable: Products must align with the EU Taxonomy or be Sustainable Investments with no significant harmful activities, contributing positively to environmental or social objectives with credible and verifiable claims.
- Transition: Products support the shift to a net-zero and sustainable economy by 2050, avoiding carbon lock-ins and aligning with credible transition plans to facilitate financing for activities moving towards sustainability.

- ESG Collection: Products select or exclude sectors or companies based on ESG performance, avoiding harmful investments and promoting responsible investment practices through various sustainability criteria.

### MANDATORY MINIMUM CRITERIA

Each product category has defined minimum investment levels and measurable Key Performance Indicators. For example, Sustainable products must have a significant portion of their investments aligned with the EU Taxonomy or classified as Sustainable Investments. Transition products must demonstrate alignment with credible transition plans, and ESG Collection products must meet material sustainability features.

### TIMING

The European Commission is expected to publish its SFDR 2.0 proposals in Q4 2025.

## Recent ESG Enforcement Actions (Europe)

### SFDR

In October 2024, the Luxembourg Commission de Surveillance du Secteur Financier (CSSF) imposed a fine of EUR 56,500 against an asset manager for breaches related to the SFDR. This marked the CSSF's first ever sanction concerning the SFDR. The breaches involved failures in internal governance and non-compliance with Article 8 fund disclosures and United Nations sustainable development goals as stated in the Fund's prospectuses. The CSSF considered the seriousness, duration, and the manager's cooperation in determining the fine.

### SFDR

The Danish Financial Supervisory Authority published a report in March 2025 relating to failings under SFDR by three Danish managers managing funds disclosing under Article 8 and Article 9 of SFDR. The issues raised related to several areas but most notably:

- A lack of process and procedures for assessing good governance (both initially and on an ongoing basis).
- Failings in relation to assessing DNSH (including the threshold for determining harm and not considering all mandatory PAIs).
- Process for determining whether an investment was a sustainable investment and oversight of delegated managers.
- Use of climate benchmarks to demonstrate prompted characteristics.

No penalties were imposed but the funds were asked to rectify.

### GREENWASHING

In April 2025, the Public Prosecutor's Office in Frankfurt imposed a EUR 25m fine on the asset management arm of a large bank relating to greenwashing, where promoted ESG characteristics weren't considered consistently in its investment process. This followed an enforcement action by the SEC for the same manager a few years ago.

## AIFMD 2: Impact for Credit Funds

|                                 | New requirements  | Impacted managers  |
|---------------------------------|---|--|
| <b>"AIFs Originating Loans"</b> | <p>"<u>Originating a loan</u>" means the granting of a loan directly by an AIF as the original lender or indirectly through a third party or SPV which originates a loan for or on behalf of the AIF, or for or on behalf of an AIFM in respect of the AIF, where the AIFM or AIF is involved in structuring the loan, or defining or pre-agreeing its characteristics, prior to gaining exposure to the loan.</p> <p><i>New requirements:</i></p> <ul style="list-style-type: none"> <li>A loan to a single borrower cannot exceed 20% of the capital of the AIF where the borrower is another AIF or a financial institution (e.g., a bank, an insurer or an investment firm).</li> <li>Requirement to retain 5% of each loan the AIF originates and transfers to third parties, for up to eight years.</li> <li>Restrictions on lending to the AIFM, depositary, delegates or their staff.</li> <li>Requirement to maintain policies and procedures for loan origination.</li> </ul> | Any fund managers when originating loans (e.g., credit funds, private equity funds making shareholder loans), <b><i>if the AIFM is an EEA AIFM (although member states may goldplate to include non EEA managers marketing in the EEA)</i></b> |
| <b>"Loan originating AIFs"</b>  | <p>"<u>Loan originating AIF</u>" is an AIF whose investment strategy is mainly to originate loans; or whose originated loans have a notional value that represents at least 50 % of their NAV.</p> <p><i>New requirements:</i></p> <ul style="list-style-type: none"> <li>Requirements set out above for AIFs originating a loan.</li> <li>Requirement to be closed-ended, unless the manager can demonstrate to the regulator that the AIF's liquidity risk management system is compatible with its investment strategy and redemption policy.</li> <li>Closed-ended AIFs subject to a 300% leverage limit and open-ended AIFs subject to a 175% leverage limit.</li> </ul>   | Managers of loan originating AIFs, <b><i>if the AIFM is an EEA AIFM (although potential for goldplating as above)</i></b>  |
| <b>All AIFs</b>                 | <ul style="list-style-type: none"> <li>Additional information to be disclosed to investors in the Article 23 disclosure (e.g., list of fees, charges and expenses borne by the AIFM).</li> <li>Additional information to be disclosed in Annex IV reports (e.g., information on <u>all</u> markets, instruments, exposures and assets invested in by AIF).</li> </ul>   | All managers marketing or managing their funds in any EEA Member States.   |

16 April, 2026

Deadline for EEA Member States to implement AIFMD 2 (in most part).

16 April, 2027

Deadline for EEA Member States to apply the new Annex IV reporting obligations.

29 April, 2029

End of transitional period for loan originating AIFs constituted before 15 April 2024.

April, 2029

Review of AIFMD 2 by the EC.

## New Corporate Offence - Failure to Prevent Fraud (FTPF)

The Economic Crime and Corporate Transparency Act 2023 (ECCTA) created a new corporate offence of 'failure to prevent fraud', which will be in force from **1 Sept 2025**.

- **In a nutshell: 'Large' organisations** (companies and partnerships) may be liable for failing to prevent an **"associated person" ("AP")** (i.e. employee, agent, subsidiary, or party performing services for it/on its behalf) committing a range of fraud offences with the **intention** of benefitting directly/indirectly: (a) the organisation; or (b) the organisation's client/customer to whom (or to whose subsidiary) the AP provides services for or on behalf of the organisation. 'Small' organisations in a 'Large' group may also be caught in certain circumstances.
- **Territorial scope: Wide!** Liability if an AP commits a base fraud offence with a **UK nexus** (i.e. a part of the fraud act(s) occurred in the UK, or the gain or loss occurred in the UK).
  - Fraud committed outside the UK by a non-UK AP intending to benefit a non-UK entity could be an offence by the latter if there were UK victims.
- **Defence:** Demonstrate that **"reasonable" fraud prevention procedures** were in place, based on the six outcomes-focused principles outlined in the government's Guidance.
- **Enforcement:** may focus on **ESG marketing or 'greenwashing'** (e.g. fraud by misrepresentation), bolstering UK's anti-greenwashing measures.
  - ECCTA also reduced a key limit on **corporate criminal liability generally**, which may lead to increased corporate prosecutions. There is a risk that ECCTA and FTPF may give rise to more **private prosecutions**.

## Steps to take by 1 Sept, 2025

1. **Risk assessment** to identify exposure to APs committing fraud, with a UK nexus;
2. **Review & update:**
  - **policies, procedures**, controls, and **whistleblowing** and **training** materials
  - **third party risk management tools** – due diligence on APs (e.g. agents, representatives, etc.); and agreements/rep's & warranties to ensure existence of and adherence to anti-fraud policies.

## THE BASICS

**In-scope companies:** "Large organisations" – any UK or non-UK corporate entities/partnerships meeting two or more of the below criteria in the financial year preceding a fraud offence:

- Over 250 employees
- Over £36 million turnover
- Over £18 million in aggregate assets on its balance sheet

**Defence:** Having "reasonable procedures" to prevent fraud, informed by six outcomes-focused principles set out in the Government Guidance published on 6 November 2024

**Timing:** Offence enters into force on 1 September 2025

**Penalties:** Unlimited fine