Proskauer

Council position on SFDR reform agreed – with increased uncertainty ahead for private markets

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On 24 June 2026, the Council of the European Union (the "**Council**") agreed its negotiating position on reforms to the Sustainable Finance Disclosure Regulation ("**SFDR**"). The stated aims are to simplify sustainability transparency rules, reduce administrative burdens and make it easier for investors to understand and compare sustainable financial products.

This alert provides commentary on the suggested changes to the final European Commission draft of the revised SFDR published in November 2025 ("**SFDR 2.0 Draft**"). Please see our note on this European Commission draft here.

The Council position is a key step in the EU legislative process, but it is not the final text. Trilogue negotiations can only begin once the European Parliament agrees its own position.

1. **From Articles 8 and 9 to three new product categories**

A key feature of the SFDR 2.0 Draft's position is the move away from the current Article 8 and Article 9 framework towards three new product categories:

- **sustainable**;
- **transition**; and
- **ESG basics**.

This reflects a widely recognised concern that the existing SFDR framework has operated, in practice, as a quasi-labelling regime, while producing disclosures that can be lengthy, complex and difficult for investors to compare. The Council's suggestions are in line with this key feature of the SFDR 2.0 Draft.

2. **Product level phase-in for 70% threshold**

The Council's position has a clear view on the ramp-up period in relation to the proposed 70% asset allocation threshold for financial products under each of the three new product categories. The Council's view is that the phase-in period would need to be reflected in pre-contractual disclosures and, unless applicable sectoral legislation provides otherwise, should not exceed three years.

This is particularly relevant for private markets, where portfolio construction may depend on deal flow, drawdowns, deployment periods and the availability of asset-level sustainability data.

3. **Mandatory indicators**

The Council's position appears designed to make the new categories more substantive and comparable.

In particular, the sustainable and transition categories would be reinforced by requiring financial market participants, when identifying and disclosing the principal adverse impacts of their investments on sustainability factors as a condition of inclusion in those categories, to use at least three mandatory indicators from a list to be specified by the European Commission.

This is intended to provide a more consistent basis for product-level sustainability claims and make it easier for investors to compare products across the market.

4. **Transition finance and fossil fuel-linked companies**

The Council's approach to the **transition** category is also of interest. It expressly recognises that transition finance may include investment in companies active in the fossil fuel sector, provided certain conditions are met.

In particular, such companies may be considered for inclusion in the transition category where they:

- allocate at least 20% of their capital expenditure to economic activities aligned with the EU Taxonomy;
- have a clear, time-bound strategy to reduce greenhouse gas emissions; and
- are assessed against a fourth mandatory adverse impact indicator, to be determined by the European Commission.

This is likely to be one of the more closely watched aspects of the Council's position.

5. **A professional-investor exemption for AIFs?**

For private markets, a critical point is the Council's proposal that the categorisation provisions should not need to be applied to alternative investment funds offered exclusively to professional investors.

This reflects the Council's view that professional investors do not need the same level of standardised information as retail investors. The exemption was a feature of an early leaked draft of the SFDR 2.0 Draft, but was not included in the final version and has not been suggested as a feature in the European Parliament's committee paper on SFDR 2.0 either, which we reported on here.

That may initially be attractive as a burden-reduction measure. However, it also raises important practical questions.

LP demand may still drive SFDR-style disclosure

Many professional LPs - including pension schemes, insurers, funds of funds and other institutional investors - may continue to require SFDR-style or equivalent sustainability information for their own regulatory, reporting or policy purposes.

If there is no common standard for professional-only AIFs, the result may be less harmonisation rather than less work or lower cost. Managers could face:

- more bespoke diligence requests;
- side-letter reporting obligations;
- parallel disclosure packs; and
- a grey area around what it means to be "aligned" with the new SFDR, where that alignment is driven by LP demand rather than by regulation.

The cost and operational impact of that will need to be worked through carefully, alongside the potential opportunity for private markets funds to agree more bespoke sustainability obligations outside the regulatory perimeter.

Marketing standards will still matter

At the same time, EU fund marketing communications are already subject to a clear, fair and not misleading standard under the Cross-Border Distribution Regulation (Regulation (EU) 2019/1156) and ESMA's related guidelines (ESMA34-45-1272).

This means that, even if a professional-investor exemption reduces prescriptive SFDR categorisation requirements, managers are unlikely to have a free hand. Sustainability-related statements would still need to be:

- supportable;
- balanced; and
- not misleading.

Navigating those requirements without a standardised disclosure framework and competing LP demands may therefore become more, rather than less, challenging.

Retailisation adds another layer of complexity

There is also a broader policy question. The EU is seeking to deepen capital markets and encourage wider access to private markets, including through the retailisation of private assets.

There is also the question of how this would apply in practice when funds are not professional-only products but may be available to retail or semi-professional investors or a vehicle within a wider fund structure has such availability. Managers may need to consider:

- whether a fund that starts life as professional-only could later sit within a distribution chain involving feeder vehicles, wealth platforms or other retail-facing structures;
- how SFDR may apply to a specific vehicle within a wider structure; and
- whether SFDR positioning needs to be consistent across an entire fund structure.

Opting-in

If the professional-investor-only exemption makes it through to the final version of SFDR 2.0, private markets fund managers may nevertheless choose to opt into the framework for the reasons outlined above, including investor demand, comparability and operational streamlining. Some managers may also seek to use one of the new categories to demonstrate their ESG credentials and provide a more recognisable reference point for LPs. In the text reviewed there is no prohibition on private markets managers opting in.

6. **What happens next?**

The Council position is not the final law. Trilogue negotiations with the European Parliament and the European Commission will determine the final shape of the SFDR reforms.

In terms of timing, the Council position proposes to extend the main application period for SFDR 2.0 from 18 months, as proposed in the SFDR 2.0 Draft, to 24 months after entry into force. That additional time will be helpful, given the scale of the categorisation, disclosure and operational changes contemplated by the reforms.

For private fund managers, the direction of travel towards simplification is welcome. However, any professional-investor exemption will need to be assessed not only by reference to the regulatory text, but also by reference to LP demand, distribution strategy and operational complexity. The challenge for the trilogue negotiations will be to ensure that the final reforms do not focus solely on retail outcomes, but also take account of the practical impact on the private markets sector, weighing the broader costs and benefits of any professional-investor exemption rather than treating it simply as a question of regulatory perimeter.

7. **Your Views**

Firms within the scope of the SFDR, as well as those otherwise impacted by it, should continue to monitor the EU legislative process closely, as the reforms, once finalised, are expected to have significant implications for their future operations and compliance obligations.”

Proskauer would welcome financial market participants views on the SFDR proposals – please do reach out to Rachel Lowe at rlowe@proskauer.com with your thoughts on a confidential basis.

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