



# Funds

## Quarterly Legal and Regulatory Update

Period covered: 1 April 2024 - 30 June 2024

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## 1. APPROACHING DEADLINES <sup>12</sup>

Q3 2024	29 July 2024	All Irish GBP-denominated LDI funds in existence as at 29 April 2024 must comply with the measures set down in the Central Bank's finalised macro-prudential policy framework by this date. See <a href="#">Section 3.1</a> below for further details.
	7 August 2024	Deadline for responding to ESMA's Call for Evidence on the review of the UCITS Eligible Assets Directive.  For further details on the Call for Evidence, see <a href="#">Section 2.1</a> below.
Q4 2024	8 October 2024	Deadline for responding to ESMA's consultation papers on draft regulatory technical standards and draft guidelines on liquidity management tools under the revised UCITS and AIFMD frameworks.  For further details, see <a href="#">Section 2.2</a> below.
	22 November 2024	Deadline for responding to the European Commission's consultation on the adequacy of macroprudential policies for non-bank financial intermediation.  See <a href="#">Section 11.1</a> below for further details.

## 2. UCITS & AIFMD

### 2.1 ESMA publishes Call for Evidence on the review of the UCITS Eligible Assets Directive

On 7 April 2024, ESMA published a call for evidence on the review of the UCITS Eligible Assets Directive<sup>3</sup> (**Call for Evidence**).

This follows a request from the European Commission to ESMA in June 2023 to provide technical advice on the review of the UCITS Eligible Assets Directive, including an assessment of any divergences which have arisen in the implementation of the Eligible Assets Directive to date and a set of recommendations on how it should be revised to keep it in line with market developments.

In its Call for Evidence, ESMA has sought feedback from interested stakeholders on a range of matters including:

- inconsistent interpretation or application of existing Eligible Assets rules;
- the notion of liquidity and presumption of liquidity for transferable securities; and
- UCITS gaining direct and indirect exposure to certain asset classes.

The deadline for responding to the Call for Evidence is 7th August 2024.

A copy of the Call for Evidence is available [here](#).

A Dillon Eustace briefing containing a detailed overview of the Call for Evidence is available [here](#).

<sup>1</sup> The "Approaching Deadlines" section does not include filing requirements in respect of any filing where the filing date is determined with reference to the relevant entity's annual accounting date (such as the filing of annual and semi-annual financial statements with the Central Bank) nor does it address any tax-related deadlines to which funds and fund management companies may be subject. Periodic reviews of matters such as the risk management framework, business plan and policies and procedures of fund management companies as well as any other actions required to be taken under the Irish Funds Corporate Governance Code are also excluded from the remit of this section as the dates for completion of same are determined by the relevant fund management company/fund rather than being set down in relevant legislation or guidance.

<sup>2</sup> To the extent that they have not already done so, funds falling within the scope of Article 8 or Article 9 of the SFDR must file updated pre-contractual annexes contained in Commission Delegated Regulation 2023/363 which contain additional disclosure obligations relating to exposure to Taxonomy-aligned fossil gas and nuclear energy economic activities with the Central Bank "as soon as possible and at the earliest opportunity".

<sup>3</sup> Directive 2007/16/EC

## 2.2 Omnibus Directive amending AIFMD and UCITS frameworks enters into force

Directive (EU) 2024/927 which amends AIFMD<sup>4</sup> and the UCITS Directive<sup>5</sup> entered into force on 15 April 2024 and must be transposed into national law by EU Member States by 16 April 2026.

Significant amendments made to the existing AIFMD and UCITS frameworks by the Omnibus Directive include the following:

- **Delegation arrangements:** strengthening of existing rules and increased supervision by ESMA and national competent authorities of such delegation arrangements through imposing enhanced reporting obligations on fund management companies relating to such arrangements
- **Liquidity risk management:** introduction of a new regime governing the use of liquidity management tools by UCITS funds and open-ended AIFs
- **Loan origination:** introduction of a pan-EU loan origination framework which sets down a common set of rules for AIFMs managing AIFs which engage in lending to third parties and which allow AIFMs who originate loans on behalf of AIFs under management to passport such services into other EU Member States
- **Depository passport:** the ability for an AIF to appoint a depository located in another EU jurisdiction in certain specific circumstances
- **Enhanced supervisory reporting regime:** extension of the AIFMD “Annex IV” reporting framework to UCITS management companies and enhancements to the standardisation of reporting including the removal of duplications and inconsistencies between reporting frameworks of different sectors of the financial industry.

Under the Omnibus Directive, ESMA has been tasked with preparing implementing regulations and guidelines on a range of specific matters relating to delegation, loan origination and liquidity management tools amongst others.

On 8 July 2024, it published consultation papers on (i) guidelines on the selection and calibration of liquidity management tools and (ii) regulatory technical standards on the characteristics of liquidity management tools.

A copy of the Omnibus Directive is available [here](#).

A Dillon Eustace three-part video series on the changes being introduced under the Omnibus Directive is available [here](#).

A copy of the consultation paper containing draft regulatory technical standards on the characteristics of liquidity management tools and the consultation paper containing draft guidelines on the selection and calibration of liquidity management tools are available [here](#).

### Key Action Points

Fund management companies should review the proposals put forward by ESMA on liquidity management tools in their consultation papers and if desired, respond to same on or before 8 October 2024.

## 2.3 ESMA publishes new Q&A on Performance Fees

On 28 May 2024, ESMA published a revised edition of its Q&A on the UCITS Directive and its Q&A on AIFMD in which it provided additional guidance on its guidelines on performance fees in UCITS and certain types of AIFs (**ESMA Performance Fee Guidelines**).

The ESMA Performance Fee Guidelines apply to all UCITS funds which charge a performance fee. They also apply to any Irish-domiciled RIAIF which charge a performance fee save where the RIAIF in question (i) has been established as a closed-ended RIAIF or (ii) is an open-ended RIAIF following a venture capital, private equity or real estate investment strategy.

<sup>4</sup> Directive 2011/61/EU

<sup>5</sup> Directive 2009/65/EC

While one of the Q&A is not applicable to Irish funds given the Irish domestic rules relating to performance fees, the second of the new Q&A will be of relevance to any Irish UCITS or RIAIF funds which operates a fund-of fund (**FOF**) investment strategy and which is subject to a performance fee.

In response to a question as to whether a manager of a FOF can charge a performance fee, ESMA confirms that this is justified where the investment policy of the relevant FoF requires “*active management of the FoF and the determination of the allocation in the underlying funds has a material impact on the FoF performance. The assessment on how performance fees are justified in light of the investment policy of the FoF should be reflected in the fund documentation, including the fund rules or the instruments of incorporation and may be reviewed, where needed, by the NCA on a case-by-case basis.*”

A copy of the revised Q&A is available [here](#).

A copy of the ESMA Performance Fee Guidelines is available from [here](#).

#### Key Action Points

Management companies of UCITS and RIAIF funds which operate a FOF investment strategy and which are charged a performance fee should ensure that they can justify the charging of such a performance fee in light of the guidance provided by ESMA and where necessary update the fund prospectus to incorporate the justification for the application of the performance fee.

### 3. CENTRAL BANK OF IRELAND

#### 3.1 Central Bank of Ireland introduces new macroprudential policy framework for Irish LDI funds

On 29 April 2024, the Central Bank of Ireland (**Central Bank**) announced the introduction of a macroprudential policy framework for Irish-authorized GBP-denominated liability driven investment funds (**LDI Funds**) aimed at making these funds more resilient to shocks to interest rates in the United Kingdom.

In doing so, the Central Bank published its finalised rules for Irish-authorized GBP-denominated LDI Funds (**Framework Document**) as well as publishing its feedback statement to Consultation Paper 157 (**Feedback Statement**).

Under the new framework, LDI Funds are required to maintain resilience of a minimum of 300bps increase in yields and must maintain that yield buffer in assets which comply with the specific requirements set down in the Framework Document, including that such assets must be sufficiently liquid in both normal and stressed market conditions.

Existing Irish GBP-denominated LDI Funds must comply with the new framework by 29 July 2024 while newly approved LDI Funds established after 29 April 2024 are required to comply immediately.

A copy of the Framework Document is available [here](#).

A copy of the Feedback Statement is available [here](#).

A Dillon Eustace briefing providing a detailed overview of the new framework applicable to LDI Funds is available [here](#).

For further updates on proposals to establish a macro-prudential framework for investment funds, please refer to [Section 11](#) below.

#### 3.2 Central Bank publishes Questions and Answers from Stakeholders on its Individual Accountability Framework

On 1 July 2024, the Central Bank published “Questions from Stakeholders” to provide responses to queries from industry that it has received to date on its Individual Accountability Framework (**IAF**).

The Questions from Stakeholders relating to the Central Bank's conduct standards introduced under the IAF will be of relevance to Irish fund management companies and Irish domiciled investment funds and address the following matters:

- The application of the conduct standards to individuals in controlled function (CF) roles providing services on a freedom of services basis
- The extent to which individuals in group entities can be considered to exercise a significant influence on the conduct of a subsidiary/related RFSP's affairs and consequently be subject to the additional conduct standards applicable to CF-1 role-holders
- The delivery of training on the IAF conduct standards where roles have been outsourced.

A copy of the Questions from Stakeholders can be accessed [here](#).

## 4. SUSTAINABLE FINANCE

### 4.1 ESMA publishes finalised guidelines on funds' names using ESG or sustainability-related terms

On 14 May 2024, ESMA published a final report containing its finalised guidelines on funds' names using ESG or sustainability-related terms (**Guidelines**).

The Guidelines require all funds using an ESG or sustainability-related term in their names (**In-Scope Funds**) to comply with two rules, namely:

- the application of an "80% threshold" rule; and
- compliance with the exclusion criteria applicable to either EU Paris-Aligned Benchmarks or EU Climate Transition Benchmarks.

Funds using the term "sustainable" or a derivative thereof must also "invest meaningfully" in sustainable investments within the meaning of the SFDR while In-Scope Funds using a transition-related term or impact-related term are also subject to additional requirements.

The criteria to be met by In-Scope Funds will depend on the specific term used in the fund name.

The Guidelines must now be translated and will apply to all newly established In-Scope Funds three months after the date on which they are published on ESMA's website in all EU official languages. There is a further six-month transition period for existing In-Scope Funds.

A copy of the Guidelines is available [here](#).

A Dillon Eustace briefing providing a detailed analysis of the Guidelines is available [here](#).

### 4.2 ESMA publishes Final Report on Greenwashing

On 4 June 2024, ESMA published its Final Report on Greenwashing (**Final Report**) in response to a request from the European Commission to the ESAs for their input on greenwashing risks and the supervision of sustainable finance policies.

This follows the publication of ESMA's Progress Report on Greenwashing in May 2023 which set the ESAs common high-level understanding of the term "greenwashing" and which identified specific areas across the financial sectors which were particularly exposed to greenwashing risks and the drivers of such risks (**Progress Report**). The Progress Report also set down recommendations to market participants, including the investment management sector, on how such risks can be mitigated.

In the Final Report, ESMA re-confirms the ESA's common understanding of the term "greenwashing" and the recommendations made to market participants outlined in the Progress Report.

The Final Report focuses primarily on the role that the European Commission, ESMA itself and each of the national competent authorities (**NCA**s) play in supervising and mitigating greenwashing risk in the financial sector.

In it, ESMA sets out actions which each of these should take in order to enhance supervision of greenwashing risk in the financial sector, including both general recommendations and sector-specific recommendations.

Of specific relevance to Irish funds, Irish fund management companies and their delegates, the Final Report:

- calls on NCAs to embed the ESAs' understanding of greenwashing into their ongoing supervision
- notes that the key drivers of greenwashing risk within the investment management sector as outlined in the Progress Report remain unchanged
- calls on those operating in the investment management/funds sector to consider those high-risk areas identified in the Progress Report in order to mitigate greenwashing risk
- recommends that market participants implement appropriate governance structures and processes to mitigate greenwashing risk and further integrate ESG risks into risk management systems and controls
- recommends that in the investment management/funds sector, NCAs should consider using portfolio analysis where relevant to assess the validity of sustainability-related claims by considering the portfolio composition of the relevant fund as well as the sustainability profiles of the underlying assets
- notes that there has been a limited number of actual or potential occurrences of greenwashing reported by NCAs to date and formal enforcement actions are, up to now, also limited. However, ESMA also asks NCAs to "gradually deepen their critical scrutiny of sustainability-related claims" meaning that the investment management/funds sector can expect supervisory focus on greenwashing to develop further over the coming years.

A copy of the Final Report is available [here](#).

A copy of the Progress Report is available [here](#).

#### Key Action Points

Fund Management Companies should review the Final Report to identify the key drivers of greenwashing risk in the investment management sector and the recommendations provided by ESMA to the investment management industry on how to mitigate those risks and assess their existing governance framework in order to identify any weaknesses which expose them to greenwashing risk.

### 4.3 ESAs publish Joint Opinion on the SFDR

On 18 June 2024, the ESAs published a joint opinion on the SFDR (**Opinion**) in which they put forward a number of proposals on how the SFDR should be reformed.

This follows a European Commission consultation on the SFDR which closed in December 2023 in which the European Commission sought feedback on the operation of the SFDR and put forward a number of alternative proposals to revising the framework to make it more fit for purpose, including the possibility of introducing a formal product categorisation regime.

While reforms to the SFDR will likely take a number of years to implement, the proposals put forward by the ESAs in the Opinion provide an insight as to what form the revised SFDR framework might take.

The recommendations put forward by the ESAs in their Opinion include:

### *Introduction of a product categorisation regime*

The ESAs have suggested that the concepts of Article 8 and Article 9 be removed from the SFDR and be replaced with a product categorisation regime for those products with “sustainability features”.

They have suggested that such regime should “as a starting point” include at least two categories, namely a “sustainable product” and a “transition” product each of which will be subject to specific disclosure obligations relevant to the category.

- Sustainable products

In order to fall within the “sustainable” category, a fund should be required to (i) invest in assets or economic activities which are already environmentally or socially sustainable and (ii) comply with a “minimum sustainability threshold”. For environmentally sustainable products, the ESAs have proposed that this minimum threshold be based on investments which are EU taxonomy-aligned which could evolve over time as update of the EU Taxonomy increases.

- Transition products

In order to fall within the “transition” category, a fund should be required to invest in assets or economic activities which are not yet sustainable but which improve their sustainability over time to become economically or socially sustainable. It should also be required to disclose quantitative targets and intermediate milestones to investors. The ESAs have suggested that the European Commission should consider whether a minimum share of such funds should be required to invest in transition assets.

### *Introduction of a sustainability indicator regime*

The ESAs have also suggested that a “sustainability indicator” regime for all funds could be introduced which could either operate (i) instead of the product categorisation regime outlined above or (ii) in addition to the product categorisation regime above where a fund could qualify for a category (if relevant criteria was met) as well as being awarded a sustainability indicator grade.

This indicator would indicate the sustainability features of the product using a scale with funds being required to satisfy clear and objective criteria in order to obtain a specific rating. The ESAs have proposed a range of alternative options for such a sustainability indicator, including a grading scale referring to letters or colours.

### *Other proposals*

- The ESAs have recommended that the key parameters of the “sustainable investment” definition under the SFDR should be revised to be made more prescriptive. They have proposed that if an economic activity is Taxonomy-eligible (i.e. covered by the EU Taxonomy), it should only be considered a “sustainable investment” if it meets the relevant technical screening criteria. If an economic activity is not covered by the EU Taxonomy framework (i.e. not taxonomy-eligible as not currently covered by the EU Taxonomy), appropriate metrics and minimum requirements under the SFDR should be complied with. The ESAs note that this could include relying on existing PAI indicators, DNSH and good governance requirements under the SFDR.
- They have also suggested that the European Commission consider whether all financial products, including those which make no sustainability claims, should disclose some “information” on adverse impacts so that investors have a clearer picture about the negative consequences of potential investments.

- Pre-contractual disclosures provided to investors should be tailored depending on the type of investor with only key information being disclosed to retail investors while more comprehensive information should be made available and disclosed to professional investors.

A copy of the Opinion is available [here](#).

#### 4.4 ESG Round-Up

##### *Delay of adoption of sustainability reporting for certain sectors and certain third-country undertakings under the CSRD.*

On 8 May 2024, Directive (EU) 2024/1306 amending Directive 2013/34/EU was published in the Official Journal of the EU (**Amending Directive**).

The Amending Directive postpones the deadline for entities falling within the scope of the CSRD to adopt sector-specific European sustainability reporting standards under the CSRD framework by two years until 30 June 2026. Under the Amending Directive, the European Commission is required to adopt such delegated acts as soon as each is ready in order to provide in-scope entities with sufficient time to prepare for implementation of those sector-specific reporting requirements.

Entities falling within the scope of the CSRD continue to be required to comply with the “general” sector-agnostic sustainability reporting standards which apply to all in-scope companies regardless of their economic sector in accordance with the timeframes set down in the CSRD and related ESRS.

The Amending Directive also postpones the adoption of general sustainability reporting standards for in-scope third-country undertakings until 30 June 2026. As already provided for under the CSRD, the first of those in-scope third country undertakings will be required to report under the CSRD for the first time in 2028.

A copy of the Directive is available [here](#).

##### *EU Platform on Sustainable Finance*

On 4 April 2024, the EU Platform on Sustainable Finance published an intermediate report on monitoring capital flows to sustainable investments (**Report**).

The Report provides information on the work carried out by the EU Platform for Sustainable Finance on monitoring the extent to which capital flows are actually being redirected towards sustainable investments, and then assessing overall progress towards the objectives of the European Green Deal. It is intended to provide insights on whether (i) sustainable finance policy has been sufficiently mainstreamed in financing and investment strategies of financial firms, (ii) the necessary investments to transform the EU economy are happening in the real economy and (iii) relevant entities have access to finance for sustainable investments.

The EU Platform on Sustainable Finance will release a final report at the end of its current mandate.

A copy of the Report is available [here](#).

##### *EFRAG publishes technical explanations on ESRS Sustainability Reporting Standards under the CSRD.*

On 30 May 2024, the European Financial Reporting Advisory Group (**EFRAG**) released a new set of technical explanations provided to assist stakeholders in the implementation of the ESRS.



This set of explanations comprises 44 new technical explanations provided in response to questions received by EFRAG as well as 12 Explanations previously released on 5 February 2024 and 12 Explanations previously released on 1 March 2024.

A copy of the set of technical set of explanations is available [here](#).

## 5. PRIIPS REGULATION

### 5.1 Council of European Union approves negotiating mandate on revisions to the PRIIPS Regulation

As part of its Retail Investment Strategy announced in May 2023, the European Commission has proposed that a number of changes be made to the PRIIPS Regulation.

On 12 June 2024, the Council of the European Union (**Council**) confirmed that it had reached agreement on its negotiating mandate on the proposed reforms to the PRIIPS Regulation.

This follows the agreement reached by the European Parliament on its negotiating mandate on proposed amendments to the PRIIPS Regulation on 11 May 2024, meaning that inter-institutional negotiations on the revisions to the PRIIPS Regulation can now begin.

A copy of the negotiating mandate agreed by the Council is available [here](#).

The original proposal put forward by the European Commission on amendments to the PRIIPS Regulation is available [here](#).

A Dillon Eustace briefing providing an overview of the European Commission's original proposals to amend the PRIIPS Regulation is available [here](#).

## 6. MONEY MARKET FUNDS

### 6.1 Central Bank of Ireland publishes Notice of Intention on revised guidelines on stress test scenarios under the MMF Regulation

On 3 May 2024, the Central Bank published a Notice of Intention (**Notice of Intention**) in relation to the ESMA Guidelines on Stress Testing Scenarios under Article 28 of the Money Market Fund Regulation<sup>6</sup> (**MMFR**) published by ESMA in March 2024 (**Guidelines**).

The revised guidelines published by ESMA set down the parameters for the stress test scenarios to be included in the stress tests conducted by managers of EU Money Market Funds under Article 28 of the MMFR.

The Notice of Intention confirms that the Central Bank expects full compliance with the Guidelines from 6 May 2024.

A copy of the Notice of Intention is available [here](#).

A copy of the Guidelines is available [here](#).

### 6.2 European Commission seeks feedback on possible reforms to the Money Market Fund Regulation

On 22 May 2024 the European Commission published a targeted consultation paper to assess the adequacy of existing macro-prudential policies in the sector to manage associated systemic risk (**Consultation Paper**).

<sup>6</sup> Regulation (EU) 2017/1131 as amended

The Consultation Paper is not focused solely on investment funds and addresses other non-banking financial intermediary sectors such as the insurance sector. However, it does ask for feedback on some possible reforms to the MMFR.

The European Commission noted that its July 2023 report on the functioning of the MMFR framework<sup>7</sup> identified three potential areas for improvement within the MMFR framework.

In the Consultation Paper, the European Commission has sought feedback on certain weaknesses of the MMFR framework identified in the 2023 report.

Questions asked by the European Commission in the Consultation Paper include:

- whether the definition of “money market instruments” should be revisited given that under the current MMFR framework, money market instruments can include instruments that are not traded on a regulated venue (being a regulated market, MTF or OTF). The European Commission has asked for feedback as to whether that definition should be restricted to those instruments admitted to trading on a trading venue with some critical level of trading activity
- whether NCAs should have enhanced powers to increase MMF liquidity buffers on an individual or collective basis
- whether the stress-testing framework should be enhanced to include additional elements on the knowledge of investor concentration and whether strengthened supervision and remediation action should be available to ESMA/the NCAs in case liquidity risks are detected
- whether the “reverse distribution” mechanism should continue to be banned under EU MMFR rules.

For further information on other questions raised by the European Commission in its Consultation Paper impacting the investment funds sector, see [Section 11.1](#) below.

Responses to the Consultation Paper must be submitted by 22 November 2024.

A copy of the Consultation Paper is available [here](#).

## 7. ELTIF

### 7.1 ESMA proposes revised draft rules for ELTIF funds

Under the ELTIF Regulation, ESMA is mandated to prepare draft regulatory technical standards (RTS) on various aspects of the ELTIF framework, including the specific rules which should be applied to open-ended ELTIFs which offer limited redemption rights to investors.

In December 2023, ESMA published a report containing its proposed RTS which was submitted to the European Commission for its consideration. The European Commission wrote to ESMA in March 2024 confirming that following its review of the RTS proposed by ESMA, it intended to adopt those RTS but with specific amendments which it outlined in an annex to the letter (**Letter**) as it believed that it was necessary to take a more “proportionate approach” to the drafting of certain provisions of the RTS.

On 22 April 2024, ESMA published an opinion in which it confirmed that it agreed with the majority of the changes to the draft RTS proposed by the European Commission in its Letter (**Opinion**).

In a significant adjustment to parameters first proposed by it in December 2023 and taking into account the feedback provided by the European Commission in its Letter, ESMA has now proposed that redemptions from an open-ended ELTIF be limited to certain specific

<sup>7</sup> Accessible [here](#).

percentages, which are calibrated depending on the redemption notice period provided by the relevant investor and the level of liquid assets held by the ELTIF. For example, it has suggested that the ELTIF must maintain at least 25% of its assets in liquid assets and can only allow a maximum of 20% of assets to be redeemed on any one redemption day where the redemption notice period to be observed by investors is less than one month.

ESMA has also proposed revised rules for open-ended ELTIFs relating to minimum holding periods, use of redemption gates and other liquidity management tools amongst others.

Its proposals must now be considered by the European Commission. If adopted by the European Commission, the European Parliament and the Council will have three months within which to object to the proposals.

A copy of the Opinion published by ESMA is available [here](#).

For a more detailed overview of the revised draft rules proposed by ESMA in its Opinion, please refer to our briefing on the topic which is available [here](#).

## 8. CROSS-BORDER DISTRIBUTION FRAMEWORK

### 8.1 United Kingdom: Timeframe and Roadmap for the Overseas Fund Regime published

On 1 May 2024, HM Treasury and the Financial Conduct Authority in the UK published “A Roadmap to implementing the Overseas Fund Regime” (**Roadmap**).

The Roadmap explains how the Overseas Fund Regime (**OFR**) is intended to be opened to EEA authorised UCITS funds following the UK’s decision to grant equivalence to these categories of funds (with the exception of UCITS established as money market funds) earlier this year. Once recognised under the OFR, an EEA UCITS can be marketed in the UK in the same way as a UK-domiciled investment fund.

The Roadmap outlines key stages and timeframes for the opening of the UK market for in-scope EEA UCITS funds with the intention of providing those which operate such funds adequate time to prepare.

It sets down how applications for recognition under the OFR will be made and confirms that there will be a series of “landing slots” for those funds currently operating under the existing UK Temporary Marketing Permissions Regime (**TMPR**) under which each fund management company will be allocated a three-month landing slot in which it will be invited to apply for OFR recognition for those funds currently operating under the TMPR. The Roadmap confirms that applicants will receive approval or refusal of recognition from the FCA within two months of submission.

The Roadmap also confirms that the UK Government and the FCA are developing a new disclosure framework for retail-facing financial services products which also apply to overseas recognised funds and that the FCA will consult on this in due course. It is expected that overseas funds will be required to follow any such FCA rules from 1 January 2027 at the latest.

Separately the Roadmap confirms that the UK Government will consult on whether the UK SDR and labelling regime should be extended to include funds operating under the OFR. This consultation is expected to run from Q3 2024.

In a related development, on 5 July 2024, the FCA updated its webpage on the OFR with further information on the landing slots for those funds currently operating under the TMPR, confirming that UCITS management companies and other fund operators will receive a binding direction from the FCA eight weeks before its landing slot opens and sets down details as to how the relevant application can be made. The webpage confirms that the landing slots are being operated on an alphabetical basis with the first landing slot for existing funds operating under the TMPR opening on 1 October 2024 and the last landing slot opening on 1 July 2026. Landing slots for new scheme applications open on 2 September 2024.

For the time being, UCITS money market funds operating under the TMRP can continue to be marketed in the UK in accordance with existing arrangements.

For a detailed overview of the Roadmap and implications for Irish-domiciled UCITS, please refer to our briefing on the topic which is available [here](#).

A copy of the Roadmap is available [here](#).

The FCA webpage updated as of 5 July 2024 to provide details of landing slots for the OFR regime, is available [here](#).

## 9. EMIR & SFTR

### 9.1 European Parliament adopts proposed EMIR 3.0

On 25 April 2024, the European Parliament published a press release announcing that it had voted in plenary to adopt the proposed Regulation amending EMIR<sup>8</sup> seeking to make derivatives clearing in the EU more attractive (**EMIR 3.0**). It has also adopted the proposed Directive making targeted related amendments to the UCITS Directive, the CRD IV Directive and the Investment Firms Directive<sup>9</sup> to ensure that the EMIR 3.0 reforms are fully implemented and consistent with existing legislation.

The adopted texts reflect the provisional agreement reached with the Council of the EU in February 2024. Please see the earlier Dillon Eustace briefing paper on this topic which available [here](#).

The next step is for the Council of the EU to formally adopt the finalised texts and thereafter the Regulation and the Directive will be published in the Official Journal of the EU. It is anticipated that such measures are likely enter into force in the final quarter of this year. However certain technical standards are required to complement the new rules and the timing for these are uncertain.

The adopted text for the proposed EMIR Regulation is available [here](#). The adopted text for the proposed EMIR Directive is available [here](#).

A copy of the European Parliament's press release is available [here](#).

### 9.2 ESMA follow-up report on EMIR Data Quality Peer Review

On 11 April 2024, ESMA published a follow-up report to its peer review into supervisory actions with the aim of enhancing the quality of data reported under EMIR (**ESMA Follow-up Report**).

In it, ESMA considers the work undertaken by NCAs in Cyprus, France, Germany, Ireland and the Netherlands, as well as by itself, to address issues raised in ESMA's previous peer review published in 2019<sup>10</sup>. This included the use of frameworks and methodologies, thematic reviews, on and off-site investigations, discussion with firms' executives and stakeholders, the roll out of monitoring tools and dashboards, and regular monitoring and structured follow-up on detected significant data quality issues.

ESMA concludes this work has forged a path to continue strengthening the regime and increasing the quality of data, although it emphasises that data quality will remain a key area of attention for supervision. ESMA highlights that ensuring data quality remains a primary duty of supervised entities. Senior management are expected to take ownership of the data they report and increase its use for internal purposes.

<sup>8</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories as amended

<sup>9</sup> Directive (2009/65/EC) as amended (**UCITS Directive**), Directive 2013/36/EU (**CRD IV**) Directive (EU) 2019/2034 (**Investment Firms Directive** or **IFD**)

<sup>10</sup> The ESMA 2019 peer review into supervisory actions aiming at enhancing the quality of data reported under EMIR (17 October 2019) (ESMA42-111-4895)

The ESMA Follow-up Report can be found [here](#).

## 10. AML & CTF

### 10.1 AML Regulation, AMLA Regulation and MLD6

#### *AML Regulation:*

On 19 June 2024, the regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing<sup>11</sup> (**AML Regulation**) was published in the Official Journal of the EU. The AML Regulation will apply from 10 July 2027.

Amongst other initiatives, the AML Regulation shall:

- the AML rules to the entire crypto sector, obliging crypto-asset service providers (**CASPs**) to conduct CDD on their customers for any transactions over 1,000 EUR;
- ensure that large transactions are not used for ML/TF by limiting large cash payments to a maximum EU-wide limit of 10,000 EUR;
- clarify beneficial ownership rules to allow for more transparency and harmonisation across the EU. Both ownership and control needs to be assessed to identify natural persons. The beneficial ownership threshold will currently stay at 25%. However, adopting a risk-based approach, Member States can identify categories of corporate entities exposed to higher ML/TF risks, and propose a lower threshold to the Commission provided that such lower threshold shall however not be lower than 15%. The Council has clarified rules applicable to multi-layered ownership and control structures and for the identification of beneficial owners for different types of entities, including non-EU entities;
- new rules on carrying out enhanced due diligence obligations (**EDD**) in certain specified circumstances and a requirement that designated entities will have to conduct EDD measures for occasional transactions and business relationships involving high-risk third countries, based on an assessment to be conducted considering the lists drawn up by FATF; and
- new rules concerning customer due diligence, reporting obligations and record-retention measures.

A copy of the AML Regulation is available [here](#).

#### *AMLA Regulation:*

On 19 June 2024, the Regulation establishing the Anti-Money Laundering Authority<sup>12</sup> was published in the Official Journal of the EU. The AMLA Regulation will enter into force on the twentieth day following its publication and will apply from 1 July 2025. The Anti-Money Laundering Authority (**AMLA**) shall start direct supervision of selected obliged entities (**SOEs**) in 2028. The seat of will AMLA has been announced as Frankfurt am Main (Germany).

A copy of AMLA Regulation is available [here](#).

<sup>11</sup> Regulation (EU) 2024/1624 of the European Parliament and of the Council of 31 May 2024 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

<sup>12</sup> Regulation (EU) 2024/1620 of the European Parliament and of the Council of 31 May 2024 establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism and amending Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010

## MLD6

On 19 June 2024, the Sixth Money Laundering Directive<sup>13</sup> (**MLD6**) was published in the Official Journal. MLD6 will address beneficial ownership information including the requirement for the information submitted to the central register to be verified, the management of the framework relating to bank account registries, the requirement for a single access point to information on real estate, expansion of the powers and role of FIUs, the potential to bring additional sectors into the scope of the 'single rulebook', carrying out national risk assessments, and the on-going role of competent authorities.

Member States must transpose the directive into national law by 10 July 2027. However, there are a number of exceptions including:

- certain provisions relating to access to the central registers of beneficial ownership of corporates and trusts and related provisions must be transposed earlier by 10 July 2026.
- provisions relating to the requirement for a single access point to information on real estate must be transposed by 10 July 2029.

A copy of MLD6 is available [here](#).

## 11. MACROPRUDENTIAL POLICY DEVELOPMENTS

### 11.1 European Commission publishes consultation paper on macroprudential policies for non-bank financial intermediaries

Following the substantial increase in the size of the non-banking financial intermediary (**NBFI**) sector since the global financial crises, on 22 May 2024 the European Commission published a targeted consultation paper to assess the adequacy of existing macro-prudential policies in the sector to manage associated systemic risk (**Consultation Paper**).

The Consultation Paper is not focused solely on investment funds and addresses other NBFI sectors such as the insurance sector.

However, the Consultation Paper does address leverage and liquidity risks arising in open-ended funds as well as asking for feedback on some possible reforms to the MMFR and an extension of supervisory powers.

This follows the publication of a discussion paper by the Central Bank in July 2023 on the approach to macroprudential policy for investment funds.

#### *Other Open-Ended Funds: Liquidity and Leverage*

The European Commission has sought feedback on potential measures to better manage liquidity and leverage risk in open-ended funds other than those established under the MMFR. These include asking for feedback on the following matters:

- whether, for financial stability reasons, ESMA or the relevant NCA should have the power to require a manager to select a specific liquidity management tool for a fund/cohort of funds even if not previously selected by the manager
- what tools (other than leverage limits applied under Article 25 of AIFMD) could be used to better manage systemic risk arising from excessive leverage in open-ended funds.

Separately, the European Commission has also asked for specific feedback on how the role of the EU bodies (including the ESAs, ESRB and ESAs Joint Committee) could be enhanced (if at all) in order to ensure a more coordinated and effective macroprudential supervision

<sup>13</sup> Directive (EU) 2024/1640 of the European Parliament and of the Council of 31 May 2024 on the mechanisms to be put in place by Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Directive (EU) 2019/1937, and amending and repealing Directive (EU) 2015/849

of NBFIs. The European Commission has also asked for feedback on whether ESMA should be given specific coordination powers over large asset management companies with day-to-day support and supervision left to the relevant NCA under ESMA guidance.

For an overview of the questions raised by the European Commission on possible reforms to the MMFR, see [Section 6](#) above.

Responses to the Consultation Paper must be submitted by 22 November 2024.

A copy of the Consultation Paper is available [here](#).

A copy of the Central Bank's discussion paper on the approach to macroprudential policy for investment funds is available [here](#).

Recent speeches delivered by the Central Bank on the development of a macro-prudential framework for investment funds are available [here](#) and [here](#).

## 11.2 FSB publishes consultation liquidity preparedness for margin and collateral calls

On 17 April 2024, the Financial Stability Board (**FSB**) published a consultation on liquidity preparedness for margin and collateral calls (**Consultation Paper**).

In its Consultation Paper, the FSB sets out proposed policy recommendations for liquidity management measures for market participants (including investment funds) to enhance their liquidity preparedness for margin and collateral calls in derivative transactions and securities markets such as repurchase and reverse repurchase arrangements.

The FSB's work in this area is against the backdrop of its findings that liquidity risk management and governance weaknesses were, in some cases, key causes for inadequate liquidity preparedness for margin and collateral calls in recent liquidity stress scenarios including COVID and the UK gilt crises in September 2022.

The FSB is consulting on eight policy recommendations across the areas of (i) liquidity risk management and governance, (ii) stress testing and scenario design and (iii) collateral management practices. The proposed recommendations are intended to reinforce or complement existing rules and guidance already implemented across individual jurisdictions and sectors.

The consultation closed on 18 June 2024.

A copy of the Consultation Paper is available [here](#).

## 12. DORA

### 12.1 DORA Commission Delegated Regulations published in the Official Journal

On 30 May 2024, the following Commission Delegated Regulations supplementing DORA were published in the Official Journal of the European Union:

- Commission Delegated Regulation (EU) 2024/1502 supplementing DORA by specifying the criteria for the designation of ICT third-party service providers as critical for financial entities, accessible [here](#); and
- Commission Delegated Regulation (EU) 2024/1505 supplementing DORA by determining the amount of fees to be charged by the lead overseer to critical providers and the way fees are to be paid, accessible [here](#).

On 25 June 2024, the following Commission Delegated Regulations were published in the Official Journal of the European Union;

- Commission Delegated Regulation (EU) 2024/1772 setting out RTS specifying the criteria for the classification of ICT-related incidents and cyber threats, setting out materiality thresholds and specifying the details of reports of major incidents, accessible [here](#).
- Commission Delegated Regulation (EU) 2024/1773 setting out RTS specifying the detailed content of the policy regarding contractual arrangements on the use of ICT services supporting critical or important functions provided by ICT third-party service providers, accessible [here](#).
- Commission Delegated Regulation (EU) 2024/1774 setting out RTS specifying ICT risk management tools, methods, processes and policies and the simplified ICT risk management framework, accessible [here](#).

Each of the above Commission Delegated Regulations entered into force 20 days after publication in the Official Journal of the European Union. DORA has an implementation date of 17 January 2025.

## 13. MISCELLANEOUS

### 13.1 ESMA publishes Position Paper on Capital Markets Union

Ahead of the European parliamentary elections which were held in June 2024, a number of European institutions including the European Council called for a strengthening of the existing EU capital markets in light of urgent financing needs and an identified need to improve the competitiveness of European businesses.

On 22 May 2024, ESMA published its position paper on building more effective and attractive markets in the EU (**Position Paper**) having assessed the current state of EU capital markets and concluded that the EU capital markets remain underdeveloped.

In the Position Paper, ESMA puts forward 20 recommendations which it believes will strengthen the EU capital markets union (**CMU**) focusing on EU citizens, EU companies and EU regulation and supervision.

Of relevance to the EU asset management sector are the following recommendations:

- The creation of a voluntary “basic” EU investment label which will be available to investment products which are “simple”, “easily accessible” and “cost-effective” and backed by an appropriate level of investor protection. ESMA has noted that this label could be made available to “certain basic UCITS funds”. Those investors with “lower knowledge and more basic investment needs” could then be directed to such funds with the final choice of investment then based on the investor’s risk appetite.
- The creation of a simplified and streamlined advice segment or guided execution for retail investors with basic investment needs. ESMA notes that this would be linked with those products which benefit from the EU “basic” investment product label.
- The European Commission should carry out a full review of the existing EU securitisation framework and put forward a proposal to revive the EU securitisation market. As part of this review, ESMA has recommended that the due diligence obligations imposed on institutional investors (which includes UCITS management companies and AIFMs investing in in-scope securitisations) should be assessed. The ESAs will provide advice on such potential reforms to the European Commission in Quarter 4 of 2024
- The current EU regulatory framework should be revised to provide regulators with greater adaptability and responsiveness to market developments and emerging risks without being required to re-open framework legislation to do so. ESMA has also called for it to be provided with regulatory forbearance powers so that it can temporarily suspend the application of provisions of EU law in exceptional circumstances.



- The European Commission and EU Member States should consider whether a revised Pan-European Personal Pension Product (PEPP) and other pan-EU long-term savings and investment products could make a contribution to EU capital markets.
- The European Commission, ESMA and the financial sector should examine and foster the use of technology to assist EU citizens to access investment products.

A copy of the Position Paper is available [here](#).

### 13.2 Council of EU adopts its negotiating position on EU Retail Investment Strategy

As part of its EU Retail Investment Strategy announced in May 2023, the European Commission has proposed that a number of changes be made to the MiFID II Directive<sup>14</sup>, the Insurance Distribution Directive (IDD)<sup>15</sup>, the UCITS Directive<sup>16</sup>, AIFMD<sup>17</sup> and the Solvency II Directive<sup>18</sup> by way of an omnibus directive.

On 12 June 2024, the Council confirmed that it had finalised its position on the EU Retail Investment Strategy meaning that negotiations with the European Parliament, which approved its negotiating mandate on the draft proposals in April 2024, can now begin.

Of relevance to UCITS management companies and AIFMs, the Council has proposed a number of changes to the proposals relating to undue costs put forward by the European Commission. In particular, it has proposed that instead of in-scope product manufacturers and product distributors being required to use peer benchmarks in their product governance processes to assess whether the proposed costs structure is appropriate as had been proposed by the European Commission, ESMA and EIOPA should develop Union supervisory benchmarks which should be used by national competent authorities as a supervisory tool to assess whether investment products fail to offer value for money. Such product manufacturers and distributors will be required to compare their investment products to a peer group of other similar investment products in the EU to determine that the product offers value for money, using information contained in databases managed by ESMA and EIOPA.

The Council has also proposed removing the ban on inducements received for execution-only sales put forward by the European Commission in its original proposals subject to other enhancements being made to existing inducement rules.

A copy of the Council's press release can be accessed [here](#).

### 13.3 ESMA and EBA publish Call for Advice on the EU Investment Firms Prudential Framework

On 3 June 2024, ESMA and the EBA published a call for advice seeking feedback from interested stakeholders on certain aspects of the existing EU investment firm prudential framework which comprises of the Investment Firms Regulation<sup>19</sup> and the Investment Firms Directive<sup>20</sup> (**Call for Advice**).

Responses received to the Call for Advice will be used to inform a report that the EBA and ESMA will provide to the European Commission on the existing framework in December 2024.

Certain of the questions posed will be of interest to UCITS management companies and AIFMs providing ancillary MiFID services (such as individual portfolio management and provision of investment advice) which are subject to certain of the obligations imposed on investment firms under the existing framework.

<sup>14</sup> Directive 2014/65/EU

<sup>15</sup> Directive 2016/97

<sup>16</sup> Directive 2009/65/EC

<sup>17</sup> Directive 2011/61/EU

<sup>18</sup> Directive 2009/138/EC

<sup>19</sup> Regulation (EU) 2019/2033

<sup>20</sup> Directive (EU) 2019/2034

In particular, the Call for Advice asks for feedback on the lack of alignment between the minimum capital requirements applicable to UCITS management companies and AIFMS providing MiFID-type services and those imposed on MiFID firms providing the same services. ESMA and the EBA ask whether such categories of management companies should be subject to equivalent capital requirements or alternatively whether requirements should be introduced limiting the amount of provided ancillary services by UCITS management companies and AIFMs. It is worth noting in this regard that the Central Bank has already aligned the minimum capital requirement obligations imposed on Irish management companies with those imposed on MiFID firms under the investment firms prudential framework.

It also asks for feedback on the remuneration rules governing MiFID firms and those remuneration rules which apply to AIFMs and UCITS management companies which are providing ancillary MiFID services, including scope of application, remuneration policies, requirements on variable remuneration and remuneration rules governing oversight, disclosure and transparency.

Feedback to the Call for Advice should be submitted by 30 August 2024.

A copy of the Call for Advice is available [here](#).

#### 13.4 Further package of economic sanctions against Russia announced by the Council of the European Union

On 24 June 2024, the 13<sup>th</sup> package of sanctions against Russia was adopted by the Council of the European Union.

Measures impacting the financial sector include:

- a prohibition on transactions with third-country banks using SPFS to increase Russia's financial resilience and to support the circumvention of EU sanctions
- a prohibition on transactions with banks and crypto assets providers, in Russia and third countries, that facilitate transactions supporting Russia's defence-industrial base.

This package also introduces new listings targeting 69 individuals and 47 entities which are subject to asset freezes and-in the case of individuals, also to travel bans.

The European Commission's webpage on sanctions adopted following Russia's military aggression against Ukraine is available [here](#).

A copy of the European Commission's FAQ on sanctions against Russia and Belarus is available [here](#).

The Central Bank's webpage on EU restrictive measures relating to actions in Ukraine is available [here](#).

#### 13.5 Further package of economic sanctions against Belarus announced by the Council of European Union

On 29 June 2024, the Council of the European Union adopted a new set of sanctions against Belarus in light of its continued involvement in Russia's illegal war of aggression against Ukraine.

The new measures are tailored in view of the specific characteristics of EU-Belarus trade and affect various sectors of the Belarusian economy, including trade, services and transport.

Further information on the range of sanctions introduced against Belarus is available [here](#).

If you have any questions in relation to the content of this update, to request copies of our most recent newsletters, briefings or articles, or if you wish to be included on our mailing list going forward, please contact any of the team members below or your usual contact in the Dillon Eustace Asset Management and Investment Funds team.

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