



MAPLES
GROUP

Funds & Investment Management Update – Ireland and Luxembourg

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1 Legal & Regulatory

1.1 UCITS and AIFMD Update

Ireland

On 1 November 2023, the Central Bank of Ireland ("Central Bank") published the 48th Edition of its [AIFMD Q&A](#). It includes a new Q&A (ID 1156) which sets out the circumstances in which the Central Bank may exempt, under section 15(1) of the Investment Limited Partnerships Act 1994, an investment limited partnership from the provisions of European Union (Qualifying Partnerships: Accounting and Auditing) Regulations 2019. It also extends the exemption from the loan origination regime currently available to AIFs who grant loans to subsidiaries (in Q&A ID 1084) to AIFs who grant loans to co-investment vehicles in which they have a majority interest.

Under the [Central Bank \(Supervision and Enforcement\) Act 2013 \(Section 48\(1\)\) \(Undertakings for Collective Investment in Transferable Securities\) \(Amendment\) Regulations 2023](#) the new requirements will not apply to UCITS Management Companies authorised for discretionary portfolio management services on or before 27 November 2023 until 27 May 2024. Similarly, the new requirements will not apply to AIFMs authorised for discretionary portfolio management services on or before 27 November 2023 until 27 May 2024 (see [Part B of Chapter 3, Alternative Investment Fund Manager Requirements](#) in the AIF Rulebook.) UCITS Management Companies and AIFMs which obtain authorisation for discretionary portfolio management services after 27 November 2023 will be subject to these new requirements on authorisation.

On 27 November 2023, the Central Bank updated its [UCITS Q&A](#) and [AIFMD Q&A](#) on filing PRIIPs KIDs. For more detail see "New PRIIPs KID Filing Requirements" below. The AIFMD Q&A also contains three new Q&As (IDs 1157, 1158 and 1159) which considers what is permissible when a RIAIF / QIAIF invests through a subsidiary.

The [European Union \(Undertakings for Collective Investment in Transferable Securities\) \(Amendment\) Regulations 2023](#) came into force on 12 December 2023 and amend the European Union (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 to ensure those regulations to provide that *"in the event of the insolvency of the depositary and any third party, or of the depositary or any third party, located in the Union to which custody of UCITS assets has been delegated, the assets of a UCITS held in custody shall be unavailable for distribution among, or redistribution among, or realisation for the benefit of, creditors of that depositary and such third party, or that depositary or such third party, as the case may be"*. Similar amendments are made by the [European Union \(Alternative Investment Fund Managers\) \(Amendment\) Regulations 2023](#) which revoke paragraph (7A) of Regulation 22 of the European Union (Alternative Investment Fund Managers) Regulations 2013.

Luxembourg

On 15 November 2023, the Commission de Surveillance du Secteur Financier ("CSSF") [announced](#) new notification and denotification arrangements applicable to Luxembourg UCITS which market their shares in another EU member state. All marketing notifications and denotifications must now be made via the CSSF's [e-Desk platform](#) and additional information is set out in the updated [CSSF guidelines on cross-border marketing notification and de-notification procedures](#).

On 30 November and 29 December 2023, the CSSF issued updates to its [FAQ on the law of 17 December 2010 on undertakings for collective investment](#). Newly inserted FAQ 6.7 (ii) and (iii) set out the CSSF's suggested approach on the annual update of PRIIPs KIDs and the publication of updated past performance. It recommends that updated PRIIPs KID(s) are submitted to the CSSF and updated past performance is published within 35 business days after 31 December each year.

EU

On 10 November 2023, the Council of the EU published a [note](#) from its General Secretariat to the Permanent Representatives Committee ("COREPER") with the final compromise text for the proposed Directive amending AIFMD and the UCITS Directive 2009/65/EC relating to delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services, and loan origination by AIFs. The text reflects the provisional political agreement that was reached between the Council and the European Parliament in July 2023.

On 15 December 2023, the European Commission adopted the following draft legislation on the UCITS Directive and AIFMD:

- [Delegated Regulation](#) supplementing the AIFMD with regard to regulatory technical standards ("RTS") specifying the information to be notified in relation to the cross-border activities of managers of AIFMs. It sets out the information that should be communicated by managers to competent authorities under Article 33 of AIFMD.
- [Delegated Regulation](#) supplementing the UCITS Directive with regard to RTS specifying the information to be notified in relation to the cross-border activities of management companies and UCITS. It sets out the information that should be communicated by managers to competent authorities under Articles 17, 18 and 20 of the UCITS Directive.
- [Implementing Regulation](#) laying down implementing technical standards ("ITS") for the application of AIFMD to the form and content of the information to be notified in respect of the cross-border activities of AIFMs and the exchange of information between competent authorities on cross-border notification letters.
- [Implementing Regulation](#) laying down ITS for the application of the UCITS Directive with regard to the form and content of the information to be notified for cross-border activities of UCITS, UCITS management companies, the exchange of information between competent authorities on cross-border notification letters, and amending Regulation (EU) 584/2010.

The Council of the EU and the European Parliament will now scrutinise them. If neither object, they will enter into force 20 days after publication in the Official Journal of the EU ("OJ") and apply 30 days later.

1.2 Progress Update on Review of Funds Sector in Ireland

The Minister for Finance, Michael McGrath, on 21 December 2023, published a progress update on the review underway of the funds sector in Ireland - [Funds Sector 2030: A Framework for Open, Resilient & Developing Markets](#). As part of the review, a public consultation took place over the summer months and closed on 15 September 2023. The progress update highlights the main trends, risks, challenges and opportunities facing the funds industry in Ireland out to 2030, as identified in the responses.

A report will be presented to the Minister by summer 2024.

The progress update notes that it will now focus on (1) an unauthorised product structure and other structures for private assets; (2) the impact of technological change; (3) the savings landscape in Ireland; (4) reviewing tax-advantaged savings and investment schemes in other jurisdictions, such as the UK and Sweden; (5) the structured finance / asset holding company regimes in other countries; (6) the existing IREF and REIT regimes; and (7) the impact of the institutional sector, including investment funds, on the property market.

The Funds Review Team will consider further progress updates, consultations and industry events. A number of meetings with stakeholders have occurred and will likely continue. Maples is involved through all relevant industry groups and has assisted clients preparing for meetings and consultation as part of this process.

1.3 Individual Accountability Framework

The [Central Bank \(Individual Accountability Framework\) Act 2023](#) ("IAF Act") enhances the regulation and governance of regulated financial service providers in Ireland ("RFSPs"). On 16 November 2023, the Central Bank issued a feedback statement, draft regulations and final guidance on the Individual Accountability Framework ("IAF"). This follows on from its consultations on implementation of the framework (CP153 and CP154). For more information, please see [CP153: CBI Consults on Individual Accountability Framework as Act Becomes Law](#)

The guidance sets out the Central Bank's expectations for the enhancements to the fitness and probity regime, new Conduct Standards and the implementation of a Senior Executive Accountability Regime ("SEAR").

Fitness and probity

The enhancements to the fitness and probity regime apply from 29 December 2023 and require RFSPs to certify the fitness and probity of persons in Controlled Function ("CF") and Pre-Approval Controlled Function ("PCF") roles. In December 2023, the Central Bank published updated [Fitness and Probity Standards](#) and [Guidance](#) on those Standards. The final regulations designating further CF and PCF roles were also published:

- [Central Bank Reform Act 2010 \(Sections 20 and 22\) \(Amendment\) Regulations 2023](#) which applies to RFSPs.
- [Central Bank Reform Act 2010 \(Sections 20 and 22 Holding Companies\) Regulations 2023](#) which applies to holding companies.

The final [Central Bank Reform Act 2010 \(Section 21\(6\)\) Regulations 2024](#) give effect to section 21(6)(a) of the Central Bank Reform Act 2010 for the purposes of giving of certificates of compliance with standards of fitness and probity.

New Conduct Standards

This aspect of the new regime imposes: obligations on all RFSPs with respect to expected standards of conduct ("Business Standards"); expected standards of conduct for every person within the fitness and probity regime ("Common Conduct Standards"); and additional standards of conduct for certain senior persons ("Additional Conduct Standards").

The Conduct Standards apply from 29 December 2023 (except for the Business Standards which will not be effective until the revised Consumer Protection Code is implemented).

SEAR

SEAR will enhance the Central Bank's ability to hold individuals to account when regulatory contraventions occur in the business area for which they are responsible and will apply to all PCF roles within in-scope firms from 1 July 2024 (except for NEDs / INEDs where this date is deferred to 1 July 2025.)

For more information see [IAF Update: Finalised Guidance Published Ahead of Year-End Introduction of New Framework](#)

Enhanced ASP

Following a 12 week public consultation, the Central Bank on 13 December 2023 published a [Feedback Statement](#) and consolidated guidelines on the enhanced [Administrative Sanctions Procedure](#) ("ASP"). The ASP is the Central Bank's main tool for carrying out investigations and inquiries, and imposing administrative sanctions if it determines that firms or individuals that it

supervises have breached financial services legislation. The ASP Guidelines came into force on 13 December 2023

The IAF Act enhanced the ASP in several ways. The Central Bank can now take direct enforcement actions against individuals in certain situations and where a settlement is agreed and is based on admissions, a High Court order is required to confirm the sanctions imposed. Other changes include allowing for earlier disclosure of documents to subjects of investigations and the Central Bank has also published the methodologies for determining monetary penalties.

1.4 New PRIIPs KID Filing Requirements

On 27 November 2023, the Central Bank published updates to its [UCITS Q&A](#) and [AIFMD Q&A](#) on the PRIIPs key information documents ("KIDs") filing requirements for UCITS and AIF funds approved before 1 January 2023. These funds were not previously required to file PRIIPs KIDs as the filing requirement only applied to new funds approved by the Central Bank after 1 January 2023.

Both Q&As clarify that from 1 January 2024, UCITS and AIFs authorised prior to 1 January 2023 that are required to provide a PRIIPs KID should submit the PRIIPs KID to the Central Bank through its portal as an ad hoc return in accordance with the guidance on the Central Bank's website. There are **no** deadlines / timelines on when filings must be made.

1.5 CP152 Feedback - Own Funds Requirements for UCITS ManCos and AIFMs Authorised for Discretionary Portfolio Management

On 27 November 2023, the Central Bank published a [Feedback Statement](#) to its consultation CP152 – outlining its proposed approach for own funds requirements for UCITS Management Companies and AIFMs authorised to provide discretionary portfolio management and additional non-core services. It confirms the amendment of the additional capital requirement imposed on UCITS Management Companies and AIFMs authorised for discretionary portfolio management services.

1.6 Central Bank Dear Chair Letter on Valuations

On 14 December 2023, the Central Bank issued a 'Dear Chair' [letter](#) on the European Securities and Markets Authority's ("ESMA's") 2022 common supervisory action ("CSA") on Asset Valuation. As part of the CSA the Central Bank required a sample of 30 Irish fund management companies to complete the questionnaire. All findings in the letter (on use of group asset valuation policies and procedures; lack of formal asset valuation error procedures; poor quality of asset valuation policies and procedures; and limited evidence of periodic reviews) should be considered in conjunction with ESMA's May 2023 [report](#) on the CSA. The letter requires all firms to conduct a review of their asset valuation frameworks to ensure they adhere to all relevant legislative requirements. This review should be completed by the end of Q2 2024.

For more information please see, [Central Bank of Ireland Letter on 2022 ESMA Common Supervisory Action on Asset Valuation](#)

1.7 CP157 - Central Bank Consults on Macroprudential Measures for LDI Funds

The Central Bank continues to develop the macroprudential framework for non-bank financial intermediation. On 23 November 2023, it launched a [public consultation](#) on the proposed codification of the existing yield buffer for Irish authorised sterling denominated liability-driven investment ("LDI") funds.

The proposal to codify the yield buffer would be imposed through Article 25 of AIFMD. This consultation outlines a policy proposal to strengthen the steady-state resilience of sterling LDI funds. The consultation is being undertaken in alignment with the CSSF building on initial coordination between the Central Bank and the CSSF in the publication of the [November 2022 industry letter](#).

The consultation is open until 18 January 2024.

1.8 CP156 - Central Bank Approach to Innovation Engagement in Financial Services

On 8 November 2023, the Central Bank launched [Consultation Paper 156](#) "Central Bank approach to innovation engagement in financial services". The consultation is open until 8 February 2024. CP156 outlines the Central Bank's current and proposed engagement approaches with innovators and stakeholders in the fintech ecosystem. It also seeks feedback from interested parties on the proposed enhancements to the Innovation Hub and the establishment of a new Innovation Sandbox Programme.

For more information see, [CP156: CBI to Revamp its Financial Services and Fintech Innovation Framework](#)

1.9 ELTIF Update

Ireland

The Central Bank's [consultation](#) (CP155) on a new ELTIF chapter in the Central Bank's AIF Rulebook to support the establishment of ELTIFs in Ireland closed on 13 December 2023. It proposes that a ELTIF will be a standalone product and therefore, it will not require separate authorisation as a RIAIF or a QIAIF. The authorisation process for ELTIFs will however broadly follow the existing authorisation processes for RIAIFs and QIAIFs.

For more information see our update, [ELTIF 2.0 – Ireland's Road Map for ELTIF Readiness](#)

Luxembourg

On 15 December 2023, the CSSF published an updated [ELTIF application form](#) which must now form part of each new ELTIF authorisation request. It aims to accelerate authorisations for new ELTIFs and subsequent amendment requests and should also be used for opt-in notifications and to communicate substantial changes to an initial application.

EU

On 19 December 2023, ESMA published its [final report](#) on draft RTS under Regulations 9(3), 18(6), 19(5), 21(3) and 25(3) of the ELTIF Regulation (EU) 2015/760. It specifies the way new requirements in the revised ELTIF Regulation apply, including:

- Criteria for establishing the circumstances in which the use of financial derivative instruments solely serves hedging purpose;
- The circumstances in which the life of an ELTIF is considered compatible with the lifecycles of each of the individual assets, as well as different features of the redemption policy of the ELTIF;
- The circumstances for using the matching mechanism (that is, the possibility of full or partial matching of transfer requests of units or shares of the ELTIF by existing ELTIF investors with transfer requests by potential investors, before the end of the life of the ELTIF);
- Criteria to use for the itemised schedule for the orderly disposals of ELTIF assets and
- Costs disclosure.

The draft RTS have been submitted to the European Commission for adoption.

1.10 Sustainable Finance Update

On 2 October 2023, ESMA published a trends, risks and vulnerabilities ("TRV") [risk analysis report](#) on environmental, social and governance ("ESG") names and claims in the EU funds industry. It shows that the share of EU UCITS investment funds with ESG words in their name has increased from less than 3% in 2013 to 14% in 2023. It also highlights that fund managers tend to prefer using generic language ('ESG', 'Sustainable') rather than more specific words which makes it difficult for investors

to verify that the fund portfolio is in line with the name. As expected, funds with ESG words in their names, and as well as funds disclosing under Article 9 of the Sustainable Finance Disclosure Regulation ("SFDR"), tend to use more ESG words in their documentation. However, the results also point to differences between document types (regulatory document versus marketing material) suggesting that fund managers adapt their communication based on the expected readers.

On 20 October 2023, two European Commission notices containing FAQs on [technical screening criteria](#) and [sustainability disclosures](#) under EU Taxonomy legislation were published in OJ. The Notices contain responses to FAQs on the Taxonomy Regulation.

The Taxonomy Regulation applies to EU measures setting out requirements for financial market participants or issuers in respect of 'environmentally sustainable' financial products or corporate bonds, to financial market participants that make available financial products and to certain undertakings that are subject to the obligation to publish a consolidated or unconsolidated non-financial statement. Two Delegated Regulations under it were published in the OJ on 21 November 2023:

- The Taxonomy Environmental Delegated Act ([EU\) 2023/2486](#) which sets technical screening criteria ("TSC") for economic activities making a substantial contribution to non-climate environmental objectives and applies from 1 January 2024.
- The Amending Taxonomy Climate Delegated Act ([EU\) 2023/2485](#) which amends the Taxonomy Climate Delegated Act ((EU) 2021/2139. It sets the TSC for economic activities that make a substantial contribution to the climate environmental objectives. The amendments set the TSC for meeting the climate objectives for some additional activities that were not previously included in the Taxonomy Climate Delegated Act. It largely applies from 1 January 2024, although some provisions apply from 1 January 2025.

On 22 November 2023, ESMA published three explanatory notes on key aspects of the EU sustainable finance framework:

- [Concepts of sustainable investments and environmentally sustainable activities in the EU sustainable finance framework](#). The concept of sustainability is reflected in the definition of 'sustainable investments' in Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector ("SFDR") and the definition of 'environmentally sustainable economic activities' introduced under the Taxonomy Regulation.
- ["Do no significant harm" definitions and criteria across the EU sustainable finance framework](#). The 'do no significant harm' ("DNSH") principle is a key element in the Taxonomy Regulation, SFDR and the Benchmarks Regulation.
- [Concept of estimates across the EU sustainable finance framework](#). This explains how EU sustainable finance legislation deals with the use of 'estimates' and 'equivalent information', and the conditions under which these are allowed as sources of data to prepare mandatory ESG metrics for the compliance of regulated entities with their obligations.

On 4 December 2023, the three European Supervisory Authorities ("ESAs") published their [final report](#) amending the draft RTS to the Delegated Regulation supplementing SFDR. The ESAs propose adding new social indicators and streamlining the framework for the disclosure of principal adverse impacts ("PAIs") of investment decisions on the environment and society.

The ESAs also suggest new product disclosures on 'greenhouse gas emissions reduction' targets. They also propose further revisions to the SFDR Delegated Regulation:

- Improvements to the disclosures on how sustainable investments DNSH to the environment and society;
- Simplification of the pre-contractual and periodic disclosure templates for financial products; and

- Other technical adjustments concerning, among others, the treatment of derivatives, the calculation of sustainable investments, and provisions for financial products with underlying investment options.

The European Commission will decide whether to endorse them within three months. These draft RTS would be applied independently of the [comprehensive assessment](#) of SFDR announced by the European Commission in September 2023 and before changes from that assessment would be introduced.

On 4 December 2023, the International Organization of Securities Commissions ("IOSCO") published a [final report](#) on supervisory practices to address greenwashing. It sets out the challenges hindering the implementation of these recommendations and concludes that greenwashing will remain a high risk to the reputation of global sustainable finance markets until the quality and reliability of information available to investors improves.

On 14 December 2023, ESMA published a [statement](#) updating its plans for the adoption of guidelines on funds' names using ESG or sustainability-related terms. ESMA launched a consultation on draft guidelines in November 2023. They specify criteria to assess whether the name of a fund containing terms, acronyms or abbreviations suggesting that the fund focuses on investments that have, or investments whose issuers have, ESG or sustainability features, are fair, clear and not misleading. It intends to postpone the adoption of the guidelines to allow for consideration of the outcome of the AIFMD and UCITS Directive reviews.

On 15 December 2023, ESMA published a [consultation](#) on draft guidelines on enforcement of sustainability information, as required by the Corporate Sustainability Reporting Directive (EU) 2022/2464 ("CSRD") (which expands the scope of undertakings who must report sustainability information and requires the European Commission to adopt mandatory European Sustainability Reporting Standards). ESMA is to publish the final guidelines in Q3 2024. Commission Delegated Regulation (EU) 2023/2772 which sets out the first set of EU sustainability reporting standards under the CSRD applies from 1 January 2024 for financial years beginning on or after that date.

On 15 December 2023, the Commission's two consultations (a [public consultation](#) and a [targeted consultation](#)) on the implementation of SFDR closed. The Commission intends to adopt a report on SFDR in Q2 2024.

For more information please see [SFDR 2.0 – Time for Evolution Not Revolution](#)

On 20 December 2023, the Council of the EU reached an [agreement](#) on its negotiating mandate on the proposed Regulation on the transparency and integrity of ESG ratings. Under the proposals, ESG rating providers will need to be authorised and supervised by ESMA and comply with transparency requirements, in particular, on their methodology and sources of information. Interinstitutional negotiations on it are expected to start in January 2024.

On 21 December 2023 the European Commission adopted FAQ [guidance](#) on the interpretation and implementation of the Taxonomy Disclosures Delegated Act to help the financial market participants prepare their first mandatory reporting exercise in 2024.

1.11 AML / CTF Developments

Luxembourg

On 21 December 2023, the CSSF issued an [updated FAQ](#) on its AML / CFT Market Entry Form which amended two FAQs on the timing for completion as well as submission of this form to include ELTIFs, UCITS Management Companies, registered and authorised AIFMs, EuSEF and EuVECA managers.

EU and International

On 9 November 2023, the European Commission adopted a [Delegated Regulation](#) with RTS on the establishment of an anti-money laundering ("AML") and countering financing of terrorism ("CTF") central database. The database, known as EuReCa, was launched by the European Banking Authority ("EBA") in January 2022. It will contain information on material weaknesses in individual financial sector operators that make them vulnerable to money laundering or terrorist financing. Competent authorities have to report material weaknesses that they have identified, as well as the measures they have taken to address those material weaknesses. The Delegated Regulation will enter into force 20 days after it is published in the OJ.

On 24 November 2023, the EBA published a [consultation](#) on preventing the abuse of funds and certain cryptoassets transfers for money laundering and terrorist financing purposes under Regulation (EU) 2023/1113 ("WCTR").

The EBA explains that the WCTR recasts Regulation (EU) 2015/847 on information accompanying transfers of funds (revised WTR) and extends its scope to the transfer of certain cryptoassets. It will make the abuse of funds and certain cryptoasset transfers for terrorist financing and other financial crime purposes more difficult and enable relevant authorities to fully trace such transfers to prevent, detect or investigate ML and TF. The WCTR mandates the EBA to issue guidelines to payment service providers, intermediary PSPs, cryptoasset service providers ("CASPs") and intermediary CASPs on what they should do to detect missing or incomplete information that accompanies a transfer of funds or cryptoassets, and the procedures they should establish to manage a transfer of funds or a transfer of cryptoassets that lacks the required information. The consultation closes on 26 February 2024.

On 27 November 2023, the EBA published its [final report](#) with revised guidelines on the risk-based supervision of credit and financial institutions' compliance with AML and CTF obligations. The guidelines were revised to extend their scope to AML / CTF supervisors of CASPs. They set clear expectations of the steps those supervisors should take to identify and manage ML / TF risks and will apply from 30 December 2024 (the date the WCTR applies from). The deadline for NCAs to report whether they comply with the guidelines will be two months after publication of the translations of the guidelines.

On 8 December 2023, the Financial Action Task Force ("FATF") [consultation](#) on draft risk-based guidance on beneficial ownership and transparency of legal arrangements on amendments to FATF recommendation 25 closed.

On 13 December 2023, the Council of the EU [announced](#) that it has reached provisional political agreement with the European Parliament on the proposed Regulation establishing the Anti-Money Laundering Authority ("AMLA"). The changes to the original proposal include the following:

- AMLA will have the power to directly supervise certain types of credit and financial institutions, including cryptoasset service providers, if they are considered high risk or operate across borders. AMLA will also be required to establish a central database of information relevant for the AML / CTF supervisory system.
- Reporting channels will be established for receiving and handling information on breaches and protection of whistleblowers, as well as co-operation between national financial intelligence units and AMLA.
- The Regulation will contain rules on preventing the circumvention of targeted financial sanctions and on AMLA's supervisory role in ensuring implementation by obliged entities of targeted financial sanctions.

The next step will be for the agreement to be confirmed by COREPER and by the Parliament. On 18 December 2023, the Council of the EU [announced](#) that it has reached agreement with the Parliament on the procedure to select the seat for AMLA.

1.12 Measures Facilitating Virtual Meetings for Companies Extended

On 15 December 2023, the government [announced](#) that the interim period of the Companies (Miscellaneous Provisions) (Covid-19) Act 2020 on holding virtual meetings has been further extended to 31 December 2024. The Act makes temporary amendments to the Companies Act 2014 and allows companies and industrial and provident societies in Ireland to hold their AGMs and general meetings by electronic means.

1.13 Fund Operators Need to Prepare for New UK Overseas Funds Regime

On 4 December 2023 the UK Financial Conduct Authority ("FCA") published a consultation on implementing the Overseas Funds Regime (OFR), which will run until 12 February 2024.

It sets out how overseas funds whose jurisdiction is deemed equivalent by the HM Treasury will be able to access the UK market. As the FCA is not competent to determine which foreign jurisdictions have a regulatory regime equivalent to the UK asset management framework, the consultation does not outline the additional requirements recognised funds could have to meet in order to gain, or keep, access to the UK market. The HM Treasury is still currently reviewing the equivalence of the UCITS regime.

For more information see, [UK Update: Fund Operators Need to Prepare for New UK Overseas Funds Regime](#)

1.14 EMIR Update

The Regulation on over the counter ("OTC") derivative transactions, central counterparties ("CCPs") and trade repositories ("TRs") ([EU](#) 648/2012 ("EMIR")) is relevant to all Irish and Luxembourg funds trading in financial derivative instruments whether on an exchange or otherwise. UCITS and AIFs are financial counterparties for EMIR purposes and subject to the full scope of EMIR obligations.

On 11 October 2023, the European Commission adopted a [Delegated Regulation](#) amending regulatory technical standards ("RTS") in Delegated Regulation (EU) 2015/2205 on the transition to the Tokyo Overnight Average Rate ("TONA") and the Secured Overnight Financing Rate ("SOFR") benchmarks referenced in certain OTC derivative contracts. The European Parliament and Council of the EU will now consider it.

On 16 October 2023, ESMA published an [opinion](#) on CCP back testing requirements under Article 49 of EMIR and Article 49 of Commission Delegated Regulation (EU) 153/2013. It clarifies the implementation and use of back tests across EU CCPs and aims to harmonise back testing practices across authorised EU CCPs.

On 28 November 2023, the European Commission adopted a Delegated Regulation (Amending Regulation) amending the RTS in Delegated Regulation (EU) 153/2013 on temporary emergency measures on collateral requirements under EMIR. Delegated Regulation (EU) 153/2013 sets out requirements for CCPs to accept highly liquid collateral with minimal credit and market risk. It was amended in November 2022 to temporarily expand the pool of eligible collateral to public guarantees and uncollateralised bank guarantees, with the provisions expiring on 29 November 2023. The modifications in the Amending Regulation are temporary and will expire six months after it enters into force.

On 6 December 2023, European Parliament's Economic and Monetary Affairs Committee ("ECON") published two reports on the proposals amending EMIR to mitigate excessive exposures to third country CCPs and improve the efficiency of EU clearing markets ("EMIR 3") which sets out amendments to the proposed Regulation and Directive. The Council of the EU also [announced](#) that it had adopted a mandate to start negotiations with the European Parliament on EMIR 3.

On 6 December 2023, the Joint Associations (that is, the Association of Financial Markets in Europe, the Futures Industry Association, the International Capital Markets Association, the International Swaps and Derivatives Association, Inc, and the International Securities Lending Association)

published an [updated](#) master regulatory reporting agreement to simplify reporting under EMIR and the Securities Financing Transactions Regulation (EU) 2015/2365 ("SFTR").

On 18 December 2023, ESMA published its [final report](#) on amendments to its guidelines on position calculation under Article 80(4) of EMIR, as amended by technical standards introduced by the EMIR Refit Regulation. The revised guidelines will apply to TRs registered or recognised by ESMA and will apply from 28 October 2024. The guidelines were revised to ensure alignment with the requirements in the technical standards and the guidelines on reporting under the EMIR Refit Regulation.

On 20 December 2023, the ESAs published a [joint final report](#) on the bilateral margining of equity options under Article 11(15) of EMIR amending RTS in Delegated Regulation (EU) 2016/2251 on the application date of collateral exchange requirements to single-stock equity options and index options. The draft RTS extend the temporary exemption bilateral margining exemption under EMIR until 4 January 2026.

1.15 Benchmark Regulation Update

On 27 October 2023, Commission Delegated Regulation ([EU](#)) 2023/2222 extending the transitional period for third country benchmarks under Article 51(5) of the Benchmarks Regulation ((EU) 2016/1011 ("BMR")) came into force. The Commission concluded in July 2023 that a majority of third country benchmark administrators have not taken the necessary steps to prepare for the end of the transitional period on 31 December 2023. To ensure continued access by EU market participants to most of the world's benchmarks, the Commission extended the transitional period to 31 December 2025.

On 13 December 2023, ESMA [announced](#) that it will launch a CSA with NCAs on ESG disclosures under the BMR in 2024. It will focus on supervised benchmark administrators, located either in the EU or in a third country and will be to assess the extent to which they are complying with the ESG disclosure requirements in the BMR. On 13 December 2023, ESMA also published a [report](#) on administrative sanctions and measures and criminal sanctions imposed under the BMR during 2022.

On 15 December 2023, ESMA published [updated Q&As](#) on the BMR. It has modified its answers to:

- Q&A 4.4 on the application of the BMR outside the EU under Article 2(1).
- Q&A 9.3 on transitional provisions applicable to third country benchmarks under Article 51(5).

On 20 December 2023, the Council of the EU [agreed](#) its negotiating mandate on the proposed Regulation amending the BMR on the scope of the rules for benchmarks, the use in the EU of benchmarks provided by an administrator located in a third country and certain reporting requirements. It specifies that only the following benchmarks should remain within scope:

- Those designated as critical.
- Those designated as significant.
- EU Paris-aligned benchmarks.
- EU climate transition benchmarks.
- Certain commodity benchmarks.

The Council advises that administrators of the benchmarks that are authorised, registered, endorsed or recognised on the date of application of the proposed Regulation should not be obliged to re-apply for authorisation, registration, recognition or endorsement.

The Regulation will enter into force 20 days after its publication in the OJ and will apply from 1 January 2026.

1.16 IFR and IFD Update

The Investment Firms Directive (EU) 2019/2034 ("IFD") and the Investment Firms Regulation (EU) 2019/2033 ("IFR") governs the prudential regime for MiFID investment firms across the EU.

On 10 December 2023, Commission Implementing Regulation (EU) 2023/2526 amending the implementing technical standards (ITS) in Implementing Regulation (EU) 2022/389 on the content lists of the information on individual data to be disclosed by competent authorities under Article 57(1) of IFD came into force.

On 18 December 2023, the EBA published a [final report](#) on guidelines on the benchmarking of diversity practices, including diversity policies and gender pay gap, under the CRD IV Directive 2013/36/EU and the IFD. The guidelines concern the information that competent authorities should collect from credit institutions and investment firms about diversity practices and will apply from three months after the date of publication on the EBA's website of the guidelines in all EU official languages. The first data collection under the guidelines will be conducted in 2025 with a reference date of 31 December 2024.

1.17 DORA Update

On 8 December 2023, the Joint Committee of the ESAs published [consultation papers](#) on draft RTS, ITS and guidelines under the Regulation on digital operational resilience for the financial sector (EU) 2022/2554 ("DORA"). DORA aims to strengthen resilience, reliability and continuity of financial services throughout the EU. DORA will come into force fully from 17 January 2025.

The consultations relate to the following:

- Draft RTS on the elements which a financial entity needs to determine and assess when subcontracting ICT services supporting critical or important functions.
- Guidelines on the estimation of aggregated annual costs and losses caused by major ICT-related incidents.
- Draft RTS on the harmonisation of conditions enabling the conduct of the oversight activities.
- Draft RTS on the content of the notification and reports for major incidents and significant cyber threats and determining the time limits for reporting major incidents and draft ITS on the standard forms, templates and procedures for financial entities to report a major incident and to notify a significant cyber threat.
- Guidelines on the oversight co-operation and information exchange between the ESAs and the competent authorities
- Draft RTS specifying elements related to threat-led penetration tests.

The deadline for responses is 4 March 2024. The ESAs expect to submit the draft standards and guidelines to the European Commission by 17 July 2024.

1.18 MMF Regulation - Guidelines on Stress Tests Updated

On 19 December 2023, ESMA published its [final report](#) on guidelines on stress test scenarios under Article 28 of the Regulation on money market funds (EU) 2017/1131 ("MMF Regulation"). The updated guidelines cover:

- The methodology to implement the scenario on the hypothetical changes in the level of liquidity of the assets held in the portfolio of an MMF.
- Specifications on the type of the stress tests and their calibration, so that managers of MMFs have the information needed to fill in the corresponding fields in the reporting template in Article 37 of the MMF Regulation.

The guidelines consider the feedback ESMA received to its January 2023 consultation. They will apply two months after the publication of the translations. MMFs and their managers are expected to measure the impact of the common reference stress scenarios in the guidelines and the revised methodology will have to be used for the first reporting period following the start of the application of the updated guidelines.

1.19 CSDR Update

On 15 December 2023, ESMA published a [consultation](#) on technical advice on amendments to Commission Delegated Regulation (EU) 2017/389, which supplements the Central Securities Depositories Regulation (EU) 909/2014 ("CSDR") relating to cash penalties for CSD participants. The deadline for responses is 29 February 2024.

On 15 December 2023, ESMA's [call for evidence](#) on shortening the securities settlement cycle (as addressed by CSDR) closed. ESMA will publish and submit to the European Commission a feedback report during 2024.

On 27 December 2023, the [Regulation](#) amending CSDR ("CSDR Refit") was published in the OJ and will enter into force on 16 January 2024. CSDR applies to CSDs that are based in the EU and their participants.

CSDR Refit makes changes to the CSDR relating to matters including settlement fails, supervisory colleges and the third-country regime. Among other things, it will enable simpler passporting and improve supervision and settlement efficiency. Depending on the Articles, it will apply from either 1 May 2024 or two years after entering into force.

1.20 EU Securitisation Regulation

On 7 November 2023, the European Commission adopted [RTS](#) amending the RTS in Delegated Regulation (EU) 2019/1851 on the homogeneity of the underlying exposures in simple, transparent and standardised securitisations ("STS").

The RTS specify the conditions for assessing the homogeneity of the underlying exposures in a pool of an STS on-balance-sheet securitisation and amend Articles 1 and 2 of Delegated Regulation (EU) 2019/1851 to extend its scope to these securitisations. The RTS will enter into force 20 days after publication in the OJ.

The RTS will not apply to securitisations if the securities are issued, or the securitisation positions are created, in accordance with terms of agreements adopted and notified to ESMA under Article 27(1) of the Securitisation Regulation ([EU](#)) 2017/2402 before the date of entry into force of the RTS.

Originators, sponsors and securitisation special purpose entities ("SSPEs") may, in respect of such securitisations, continue to use the designation 'STS' or 'simple, transparent and standardised' (or an indirect reference to those terms) without complying with the criteria in the RTS provided that those securitisations comply with Article 18 of the Securitisation Regulation.

On 7 November 2023, European Commission Delegated Regulation ([EU](#)) 2023/2175 supplementing the Securitisation Regulation with regard to RTS specifying in greater detail the risk retention requirements for originators, sponsors, original lenders and servicers came into force. The RTS in particular cover: the methods of retaining risk; measuring the level of retention; the prohibition on hedging or selling the retained interest; the conditions for retention on a consolidated basis; the conditions for exempting transactions based on a clear, transparent and accessible index; the methods of retaining risk in traditional securitisations of non-performing exposures; and the impact of fees paid to the retainer on the effective material net economic interest.

On 13 December 2023, the European Commission adopted [RTS](#) specifying the minimum performance-related triggers for STS on-balance-sheet securitisation transactions. The RTS will be published in the OJ and enter into force if the European Parliament and the Council of the EU do not object to them during the scrutiny period.

On 21 December 2023, ESMA launched a [consultation](#) on the revision of the securitisation disclosure templates under Article 7 of the Securitisation Regulation. These standards relate to the specific information and details of securitisation transactions that should be made available. The consultation runs until 15 March 2024.

1.21 MiFID II / MiFIR Update

Ireland

On 1 December 2023, the Central Bank issued a ['Dear CEO' letter](#) providing feedback to industry on the findings of its review of the application of the costs and charges disclosure requirements under MiFID and to outline its expectations. Firms are expected to carry out a documented review of their costs and charges practices against ESMA's [July 2023 statement](#) and this letter. The review is required to include details of actions taken to address the findings and be completed along with an action plan approved by the Board by 31 March 2024.

EU

On 3 October 2023, ESMA [announced](#) that, in 2024, it will launch a CSA with NCAs on the integration of sustainability in firms' suitability assessment and product governance processes and procedures under the MiFID II Directive (EU) 2014/65/EU ("MiFID II"). The aim is to assess the progress made by intermediaries in the application of the key sustainability requirements, which apply since 2022 following amendments to the MiFID II Delegated Acts. The CSA will also cover the arrangements that firms have in place to understand and correctly categorise investment products with sustainability factors for the purpose of the suitability assessment. On 25 October 2023, the CSSF confirmed in a [press release](#) that it would contact a sample of supervised entities in the context of this CSA.

ESMA's [Guidelines](#) on certain aspects of the MiFID II suitability requirements and Guidelines on MiFID II product governance requirements apply from 3 October 2023.

On 13 October 2023, ESMA published an updated [Q&As](#) on market structures topics under MiFID II and the Markets in Financial Instruments Regulation (EU) 600/2014 ("MiFIR").

On 18 October 2023, the Council of the EU published final compromise texts for proposed amendments to MiFIR and MiFID II to improve MiFID II market data access and transparency that reflect the provisional political agreement reached with the European Parliament in June 2023.

On 27 October 2023, ESMA published updated [Q&As](#) on transparency topics under MiFID II and MiFIR. The Q&As delete a Q&A on the minimum size of orders held in an order management facility for non-equity financial instruments.

On 29 November 2023, the European Commission published a [consultation](#) on replacing the public identifier of OTC derivatives in the EU. It relates to the Commission's proposal to amend MiFIR following the MiFIR review. Comments can be made until 9 January 2024. It is expected that the Council of the EU and the Parliament will reach provisional agreement on the MiFIR Amending Regulation in Q1 2024.

On 14 December 2023, ESMA published a [discussion paper](#) on investor protection topics linked to digitalisation under MiFID II which examines the recent increase in the adoption of digital tools and social media by firms and retail investors following the pandemic and looks at how technology impacts retail investor behaviour and decision making. The deadline for comments is 14 March 2024.

On 15 December 2023, ESMA published updated [Q&As](#) on investor protection and intermediaries under MiFID II and MiFIR. Q&A 13 in the information on costs and charges section has been updated to clarify that the requirement relating to disclosure of 'all in fees'.

1.22 CSSF FAQ on UCI Administrators

On 29 November 2023, the CSSF issued an updated [FAQ on CSSF circular 22/811 on UCI administrators](#), with three new FAQs on the administration function, compliant sub-delegation models and annual reporting:

1. On the administration function, the CSSF confirmed in FAQ 3.3 that, to the extent, a UCI administrator is responsible for calculating the net asset value ("NAV") and for the accounting

function, it may not solely compile or input accounting information it receives from third parties or delegates.

2. FAQ 4.1 confirms that a UCI administrator may delegate or sub-delegate UCI administration tasks to one or more entities (which may but does not have to be part of the group to which the UCI administrator belongs) provided that such delegation complies with CSSF circular 22/811 (and which requires, among other things, that the entire delegation model be based on objective reasons and does not generate additional or increased risks for the relevant funds).
3. The CSSF confirmed in FAQ 5.1 that, as of 30 June 2023, a UCI administrator must file the information on its business activities and resources as set out in Annex B of CSSF circular 22/811 no later than five months after its financial year end.

1.23 CSSF FAQ on Virtual Assets

On 18 December 2023, the CSSF issued an updated [FAQ on virtual assets for undertakings for collective investment](#), which amended one previously published FAQ on the authorisation process for Luxembourg investment fund managers ("IFMs") managing AIFs investing in virtual assets to include a requirement to also assess the role of the IFM in the discretionary portfolio management of the AIF.

1.24 IOSCO - Policy Recommendations for Crypto and Digital Asset Markets

On 16 November 2023, IOSCO published a [final report](#) with its policy recommendations for crypto and digital asset markets.

The recommendations are addressed to relevant regulatory authorities and are based on the principle of "*same activity, same risk, same regulatory outcome*". They are aimed at activities performed by CASPs, which include offering, admission to trading, ongoing trading, settlement, market surveillance and custody, and marketing and distribution (covering advised and non-advised sales) to retail investors.

The 18 recommendations cover six areas: conflicts of interest; market manipulation, insider trading and fraud; custody and client asset protection; cross-border risks and regulatory co-operation; operational and technological risk; and retail distribution covering recommendations on retail client appropriateness and disclosure.

Though not addressed to them, all cryptoasset market participants are encouraged to consider the expectations in the recommendations.

1.25 IOSCO – Final Guidance on Anti-Dilution Liquidity Management Tools

On 20 December 2023, IOSCO [published](#) its final guidance on anti-dilution liquidity management tools ("LMTs") for liquidity risk management for collective investment schemes. It is designed to support the greater use of anti-dilution LMTs such as redemption gates and the suspension of redemptions to ensure fairness between redeeming investors and investors remaining in the fund, whether in times of market stress where there may be excess redemptions, or in normal conditions. The report contains guidance around the design and use of anti-dilution LMTs; the oversight of anti-dilution LMTs by fund / fund manager boards and depositaries; disclosure to investors about the use of anti-dilution LMTs; and overcoming barriers and disincentives to implementing anti-dilution LMTs.

1.26 FSB Recommendations to Address Structural Vulnerabilities from Liquidity Mismatch in Open-Ended Funds

On 20 December 2023, the Financial Stability Board ("FSB") published [revised policy recommendations to address structural vulnerabilities arising from liquidity mismatch in open-ended funds](#) ("OEFs"). The revised recommendations follow an assessment report by the FSB on the effectiveness of the 2017 [FSB Recommendations](#) and the 2023 [consultation report](#) responding to certain findings in the assessment report. They also reflect the consultation feedback and set out the

key objectives, i.e. greater inclusion of anti-dilution LMTs in OEFs' constitutional documents and greater use of, and greater consistency in the use of, anti-dilution LMTs in both normal and stressed market conditions, for an effective regulatory and supervisory framework to address vulnerabilities arising from liquidity mismatch in OEFs.

To achieve these objectives, the recommendations provide clarity on redemption terms of OEFs depending on asset class, namely by adopting the categorisation approach based on the liquidity of the OEFs' assets, i.e. funds that invest mainly in 'liquid' assets; funds that invest mainly in 'less liquid' assets; funds that allocate a significant proportion of their assets under management to 'illiquid' assets. Based on their categorisation, OEFs would be subject to specific expectations on their redemption terms and conditions.

Nine recommendations that financial regulatory and supervisory authorities should apply have been set out and contain key changes relating to (i) adequacy of information and transparency; (ii) adequacy of liquidity management both at the design phase and on an ongoing basis; (iii) adequacy of liquidity risk management tools and measures to deal with stressed market conditions; and (iv) additional market liquidity considerations.

1.27 Investment Fund Statistics

Ireland

The main points to note in the Central Bank's [Q3 2023 statistics](#) issued in November 2023 are as follows:

- The NAVs of Irish-resident funds increased for the fourth successive quarter, by €29 billion to €3,854 billion, in Q3 2023, driven mainly by transaction inflows of €50 billion, with negative revaluations of €22 billion.
- Bond and equity funds increased by €4 billion and €8 billion respectively but these were offset by decreases in mixed and hedge funds, both of €4 billion. These movements continue ongoing trends, partly reflecting the popularity of passive, index-tracking funds, particularly bond and equity ETFs, relative to actively managed funds.
- MMFs showed NAV increases of €26 billion driven primarily by investor inflows of €18 billion.

Luxembourg

The main points to note in the CSSF's [November 2023](#) update for regulated Luxembourg funds are as follows:

- Total net assets held by Luxembourg UCITS, Part II UCIs, SIFs and SICARs (regulated Luxembourg investment funds) amounted to €5,152.229 billion as at 30 November 2023.
- The number of CSSF-regulated Luxembourg investment funds active in the markets totals 3,293.
- Of the 3,293 active Luxembourg investment funds, 2,155 entities adopted an umbrella structure and together have a total of 12,864 sub-funds. The remaining 1,138 are structured as stand-alone funds.
- As at November 2023, there were a total of 14,002 fund units.
- During November 2023, there were more redemptions than subscriptions in equity funds while there were more subscriptions than redemptions in fixed-income funds.

In addition, the number of Luxembourg RAIFs reached 2,498 as of 2 January 2024.

2 Tax

2.1 Ireland – Finance Act Implications for International and Irish Business

The Irish Finance (No.2) Act was signed into law on 18 December 2023. The Act gives effect to the tax changes outlined in Budget 2024. This summary highlights the most significant changes for Irish and international investors, corporates and financial institutions.

For more information, please see [Irish Finance \(No.2\) Act – Implications for International and Irish Business](#)

2.2 Ireland - Pillar Two – EU Global Minimum Tax

The [Finance \(No. 2\) Act 2023](#) was enacted on 18 December 2023 and transposes the Global Minimum Tax Directive or Pillar Two Directive ([EU\) 2022/2523](#) which provides that groups with a global turnover over €750 million have a minimum effective tax rate of at least 15% in every jurisdiction where they operate.

The Pillar Two Directive implements the OECD Pillar Two Global Minimum Tax ("GloBE") Model Rules across the EU and applies to cross-border and EU domestic groups of entities with an EU connection. The objective is to ensure those groups pay a minimum effective tax rate of 15% on the income arising in each of the countries across the world in which they operate. The main rules to achieve this are the income inclusion rule ("IIR"), the undertaxed profits rule ("UTPR") and the qualified domestic minimum top-up tax ("QDMTT"). The IIR and QDMTT provisions will apply to tax years beginning on or after 31 December 2023. The UTPR will broadly apply to tax years beginning on or after 31 December 2024.

The Directive excludes certain entities from its provisions including an investment fund that is an 'ultimate parent entity' and, broadly, asset holding entities held 95% by excluded entities (or 85% in certain cases) so, in most cases, it will not apply to investment funds. The Maples Group can review any international investment fund structures with an Irish or Luxembourg legal entity to ensure that that a particular fund structure falls within the exclusion.

For more information please see our client update [EU Global Minimum Tax Directive and Investment Fund Structures](#)

2.3 Luxembourg - Implementing Pillar Two Directive

The [Luxembourg law of 22 December 2023 on the effective minimum taxation](#) ("Pillar Two Law"), which implements the Pillar Two Directive (EU) 2022/2523 has been adopted and will apply in respect of fiscal years starting on or after 31 December 2023.

The Pillar Two Law introduces a jurisdictional minimum taxation of at least 15% for multinational groups or large-scale domestic groups with a presence in Luxembourg through a 'constituent entity' provided that the group has an annual revenue of €750 million or more in at least two of the four fiscal years preceding the tested fiscal year, as per the consolidated financial statements of the group parent entity.

It introduces three new taxes in Luxembourg: an Income Inclusion Rule tax ("IIR" or "impôt relatif à la règle d'inclusion du revenu"), an Undertaxed Profits Rule tax ("UTPR" or "impôt relatif à la règle des bénéficiaires insuffisamment imposés"), and a Qualified Domestic Minimum Top-up Tax ("QDMTT," or "impôt national complémentaire"). The IIR and the QDMTT will be applicable to fiscal years starting on or after 31 December 2023, while the UTPR will come into effect for fiscal years starting on or after 31 December 2024.

While sector-specific exclusions are provided for investment funds and other financial services, it is crucial to closely monitor the scope and applicability of such exclusions. Further certain investment structures may still be subject to additional tax implications. Fund managers must promptly verify whether their investment structures could fall within the scope of the rules and be affected.

2.4 New Luxembourg - UK Tax Treaty

On 22 November 2023, the new UK-Luxembourg double tax treaty entered into force becoming effective for withholding tax purposes from 1 January 2024 and for UK income and capital gains tax purposes from 1 April 2024.

The new treaty expands taxation rights on capital gains of shares in 'land rich' companies located in the respective treaty state. Under the amended treaty, the UK or Luxembourg tax authorities may tax non-residents on sales of shares of land rich companies, which is defined as entities deriving more than 50% of their value directly or indirectly from real estate located in the respective jurisdiction. Prior to the amendment, Luxembourg shareholders of such UK land rich companies were only

taxable in Luxembourg under the treaty but could often benefit from the participation exemption on such disposals.

Another feature of the amended treaty is that Luxembourg investment vehicles set up in corporate form may be entitled to treaty benefits. Such corporate investment vehicles can benefit as residents for purposes of the treaty provided that they are at least 75% owned by 'equivalent beneficiaries'. An equivalent beneficiary is defined as a Luxembourg resident or a resident of another jurisdiction that exchanges administrative information with the UK and who would also be eligible to at least the same tax rate of the respective income received by the Luxembourg vehicle under the relevant tax treaty with the UK. Corporate investment vehicles (SA, SARL or SA) that can benefit include Luxembourg UCITS, Part II UCIs, SIFs, and RAIFs.

The amended treaty now provides an exemption from withholding tax on dividends (compared to the prior treaty's 5% and 15% rates), except a 15% withholding tax on dividends will still apply when paid out of investment vehicles, which are indirectly or directly investing into real estate such as a UK REIT. In addition, the right to tax royalty payments has now been exclusively attributed to the state of residency of its beneficial owner (instead of the 5% withholding tax permitted previously to the source state). Consistent with all new Luxembourg tax treaties, the new treaty now includes the principal purpose test as found in the OECD's multilateral instrument.

2.5 Luxembourg Minimum Net Worth Tax for Soparfi Companies Ruled Unconstitutional

On 10 November 2023, the Luxembourg Constitutional Court held that the special rule for annual minimum net worth tax of €4,815 applicable to Luxembourg 'Soparfi' companies violated the Luxembourg Constitution, and that instead the progressive scale applicable to other Luxembourg companies should also be applicable to Soparfis. Under Luxembourg minimum net worth tax rules, Luxembourg companies are subject to a scale ranging from €350 to €10,700 depending on the total assets of the balance sheet, whereas Luxembourg Soparfis were subject to a flat €4,815 annual minimum net worth tax regardless of the total assets. For minimum net worth tax purposes, a Soparfi is a Luxembourg company of which 90% or more of its assets consist of financial assets, transferable securities, receivables, and cash, and such assets total more than €350,000. The taxpayer, also a Soparfi, argued successfully that the lower minimum net worth tax of €1,605 under the progressive scale should be applicable (not the higher €4,815) and the Constitutional Court agreed and concluded the taxpayer suffered discrimination and a violation of Luxembourg's Constitution as a result of this arbitrary difference.

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About the Maples Group

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The Maples Group's Irish legal services team is independently ranked first among legal service providers in Ireland in terms of total number of funds advised (based on the most recent Monterey Ireland Fund Report, as of 30 June 2022). Our sizeable and fast-growing Luxembourg legal services team cover the whole range of funds and investment management services. For more information, please visit: [maples.com](https://www.maples.com).

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