



MAPLES
GROUP

Funds & Investment Management Update – Ireland and Luxembourg

Quarterly Update | January – March 2022

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1 Legal & Regulatory

1.1 UCITS and AIFMD Update

Ireland

On 31 March 2022, the first Irish regulated Qualifying Investor Alternative Investment Funds ("QIAIFs") were granted permission, in principle, by the Central Bank of Ireland ("Central Bank") to take exposure to cryptoassets. Maples and Calder (Ireland) LLP is pleased to have advised on this first approval which will enable two QIAIFs to obtain indirect exposure to Bitcoin, by acquiring cash-settled Bitcoin futures traded on the Chicago Mercantile Exchange.

For more information see [Maples Advises on First Irish Funds to Invest in Crypto Assets](#)

EU

On 20 January 2022, the European Authorities and Securities Markets Authority ("ESMA") launched a [common supervisory action](#) ("CSA") with national competent authorities ("NCAs") on the valuation of UCITS and open-ended alternative investment funds ("AIFs") across the EU. The CSA will be conducted in 2022 using a common assessment framework developed by ESMA and will focus on authorised managers of UCITS and open-ended AIFs investing in less liquid assets.

On 11 March 2022, the Commission de Surveillance du Secteur ("CSSF") [launched](#) the first phase of the CSA asking a sample of UCITS and AIFs investment fund managers ("IFMs") to complete a dedicated questionnaire for all UCITS and AIFs managed. Completed questionnaires must be submitted via the CSSF's electronic portal ("eDesk"). IFMs that were not contacted by the CSSF on or before 11 March 2022 are not required to take any action.

For more information see our client update, [ESMA's Common Supervisory Action on Valuation of UCITS and Open-Ended AIFs](#)

On 3 February 2022, ESMA published its fourth annual statistical report on the AIF sector which covers the European Economic Area. The main risk faced by the sector relates to a mismatch between the potential liquidity of the assets, and the redemption timeframe offered to investors. While at aggregate level this mismatch is unlikely to materialise, it indicates that AIFs with a liquidity deficit would face challenges if large redemptions were to occur. This is particularly the case for real estate funds and funds of funds.

1.2 Cross-Border Distribution of Investment Funds

The EU's regulatory framework for facilitating the cross-border distribution of UCITS and AIFs came into effect on 2 August 2021. It comprises Regulation (EU) 2019/1156 ("CBD Regulation") and Directive (EU) 2019/1160 ("CBD Directive"). The [European Union \(Undertakings for Collective Investment in Transferable Securities\) \(Amendment\) Regulations 2021](#) and the [European Union \(Alternative Investment Fund Managers\) \(Amendment\) Regulations 2021](#) give effect to the CBD Directive in Ireland. The [law of 21 July 2021](#) gives effect to the CBD Directive in Luxembourg.

Since 2 February 2022, Irish-authorized UCITS management companies and AIFMs must ensure that marketing communications published in respect of UCITS and AIFs comply with the [Guidelines on marketing communications under the CBD Regulation](#) ("Guidelines"). In a [Notice of Intention](#) published on 1 October 2021, the Central Bank confirmed it will consult on the incorporation

of a requirement into the Central Bank [UCITS Regulations](#) and [AIF Rulebook](#) but in the interim it expects full compliance with the Guidelines from 2 February 2022.

For more information see our client update, [ESMA Guidance on Funds' Marketing Communications](#)

On 31 January 2022, the CSSF published [circular 22/795](#) confirming that it applies the Guidelines and integrates them into its administrative practice and regulatory approach. From 2 February 2022, all Luxembourg IFMs within the scope of the circular must comply with the Guidelines.

On 2 February 2022, ESMA also published a [document](#) with hyperlinks and the summaries of national rules governing marketing requirements, which were provided by NCAs (as required by the CBD Regulation).

On 21 February 2022, the CSSF published an updated [FAQ](#) on the rules on cross-border distribution of investment funds that highlights the changes for CSSF notifications.

1.3 Sustainable Finance Update

On 11 February 2022, ESMA published its [sustainable finance roadmap for 2022-24](#). ESMA has identified three priorities for its sustainable finance work: tackling greenwashing and promoting transparency; building NCAs' and ESMA's capacities in the sustainable finance field; and monitoring, assessing and analysing ESG markets and risks.

On 23 February 2022, the European Commission adopted a [proposal](#) for a Corporate Sustainability Due Diligence Directive. The proposal introduces a sustainability due diligence duty on large EU companies and non-EU companies with significant EU activity to address adverse human rights and environmental impacts in their own operations, their subsidiaries and their value chains.

SFDR

On 25 March 2022, the European Supervisory Authorities ("ESAs") (that is, the European Banking Authority ("EBA"), European Insurance and Occupational Pensions Authority ("EIOPA") and ESMA) published an [updated supervisory statement](#) on the application of the Sustainable Finance Disclosure Regulation (EU) 2019/2088 ("SFDR"). It seeks to mitigate the risk of divergent application of the SFDR and Articles 5 and 6 of the Taxonomy Regulation (EU) 2020/852. The ESAs recommend that NCAs and market participants use the period to 1 January 2023 to prepare for the Commission Delegated Regulation containing regulatory technical standards ("RTS") on sustainability disclosures.

On 6 April 2022, the European Commission adopted those [final RTS](#) to be used by financial market participants when disclosing sustainability-related information SFDR. They specify the exact content, methodology and presentation of the information to be disclosed, thereby improving its quality and comparability. Under these rules, financial market participants will provide detailed information about how they tackle and reduce any possible negative impacts that their investments may have on the environment and society in general. Moreover, these new requirements will help to assess the sustainability performances of financial products.

The Council of the EU and the European Parliament will now scrutinise the Delegated Regulation. It is scheduled to apply from 1 January 2023.

Taxonomy Regulation

On 9 March 2022, the European Commission adopted a [Complementary Climate Delegated Act](#) setting out the conditions that nuclear and natural gas energy activities can be included in the list of economic activities covered by the Taxonomy Regulation. The conditions for inclusion include:

- That they contribute to the transition to climate neutrality.
- For nuclear, that it fulfils nuclear and environmental safety requirements.
- For natural gas, that it contributes to the transition from coal to renewables.

The Council of the EU and the European Parliament will now scrutinise the Act. If neither object, it will enter into force 20 days after its publication in the Official Journal of the EU and will apply from 1 January 2023.

On 28 February 2022, the EU Platform on Sustainable Finance published its [final report](#) on a social taxonomy. It sets out a proposed structure for a social taxonomy noting differences between a social taxonomy and an environmental taxonomy. On 29 March 2022, it published its [final report](#) on taxonomy extension options supporting a sustainable transition under the Taxonomy Regulation which recommends extending the taxonomy framework to classify activities according to a traffic light system as follows:

- Unsustainable
- Unsustainable (red) performance requiring an urgent transition to avoid significant harm.
- Intermediate (or amber) performance. These activities could qualify for taxonomy-recognised investment as part of an intermediate transition plan under which they continue to improve to stay out of significantly harmful performance.
- Unsustainable, significantly harmful performance requiring urgent, managed exit or decommissioning. These activities cannot be improved to avoid significant harm.
- Low environmental impact activities that do not have a significant environmental impact.

On 30 March 2022, it published a further [report](#) with recommendations to the European Commission on the technical screening criteria for the four remaining environmental objectives under the Taxonomy Regulation.

1.4 Regulatory Response to the War in Ukraine and Sanctions

As part of the EU's overall response to the outcome of Russia's military aggression, ESMA, in coordination with NCAs, is [monitoring](#) the impact of the Ukraine crisis on financial markets and is prepared to use its relevant tools to ensure the orderly functioning of markets, financial stability and investor protection. Areas of focus include: engagement with credit rating agencies; the impact of sanctions on central securities depositories' operations; and the collection and sharing of information and experiences among NCAs regarding cyber incidents.

The [Central Bank](#) and the [CSSF](#) are also publishing and updating details of new restrictive measures / sanctions that are adopted in this regard regularly, as well as any associated EU / UN guidance. For more information see [CBI Issues Letter on Managing Risk Due to the Russian Invasion into Ukraine](#)

1.5 Central Bank 2022 Financial Regulation Priorities

The Central Bank's Director General, Deville Rowland, set out its financial regulation priorities for 2022 in a [speech](#) delivered on 11 March 2022. The Central Bank's objective is to create the regulatory context in which the potential benefits of innovation for consumers, businesses and society

can be realised, while the risks are effectively managed. These priorities align with its new strategy published in September 2021 and effective from January 2022.

It will continue to operate a forward looking approach to the authorisation of firms. In the area of governance, it will continue to work with the Department of Finance on the introduction of the Individual Accountability Framework. At the European level, significant areas of focus will include the development of a macro-prudential framework for funds, progressing the AIFMD review, seeking to further the advancement of capital markets union, and helping shape the overhaul of EU AML structures.

1.6 Central Bank Securities Markets Risk Outlook Report

The Central Bank published its "[Securities Markets Risk Outlook Report - A Changing Landscape](#)" report on 8 February 2022. It identifies the key risks and areas of focus of the Central Bank's Securities and Markets Supervision Directorate ("SMSD") and its expectations of what regulated financial services providers and market participants should do to effectively identify, mitigate and manage risks in their particular businesses.

It also sets out a non-exhaustive list of supervisory priorities for 2022 including:

- Completion of the CSA on valuations in the funds sector;
- Follow up on its FMC Guidance Review and CSA on UCITS costs and fees;
- Targeted risk assessments focussing particularly on governance, operational and capital risk for depositaries and fund administrators;
- Enforcement to include both specific cases across its mandate; and assessment and investigation of suspected market abuse; and
- Continuation of the planned supervisory review framework project for SMSD's mandates, and in particular, reviewing the PRISM impact rating model for funds and related supervisory engagement.

For more information see our client update, [Central Bank of Ireland: Supervisory Priorities for 2022](#) and also [Further focus on the Central Bank of Ireland's 2022 Priorities](#)

1.7 AML and White Collar Crime Developments

Luxembourg

On 10 January 2022, a new 'Collective Investment Sector Reporting Tool' was made available on the eDesk to facilitate the submission of reports required under [circular 21/788](#), [circular 21/789](#) and [circular 21/790](#). These circulars aim to improve the risk-based supervision by the CSSF of IFMs and undertakings for collective investment ("UCIs"), both for prudential and AML / CFT purposes. For documents to be submitted in accordance with circular 21/790, only the self-assessment questionnaire, the separate report (only for UCITS and Part II UCIs) and the management letter for UCITS, Part II UCIs, SIFs and SICARs with a financial year ending between 30 June 2022 and 30 November 2022 are currently available on the eDesk. Information on the availability of the reports for subsequent financial year ends will be provided at a later date.

On 26 January 2022, the CSSF released a podcast on its 2022 AML / CFT conference webinar focusing on AML / CTF compliance for specialised professionals of the financial sector.

On 18 March 2022, the CSSF published a [FAQ](#) on the AML / CFT RC report for CSSF supervised Luxembourg investment funds and IFMs. The FAQ cover the completion and transmission of the AML

/ CFT RC's summary report as defined in article 42 (6) and 42 (7) of the CSSF [Regulation No 12-02](#) of 14 December 2012 on the fight against money laundering and terrorist financing, as amended.

EU and International

On 31 January 2022, the EBA [launched](#) its AML/CFT central database ("EuReCA"). It will contain information on material weaknesses in individual EU financial institutions identified by competent authorities. The EBA will use information from EuReCA to inform its view of AML and CFT risks affecting the EU financial sector. It will also share information from EuReCA with competent authorities.

The EBA published a final report and draft RTS on EuReCA in December 2021 which clarify how its reporting obligations interact with other notifications such as those under Article 62 of the Fourth Money Laundering Directive ([EU](#) 2015/849 ("MLD4")). EuReCA will not start to collect personal data until the approval of the draft RTS by the European Commission.

On 17 February 2022, the Council of the EU published two European Central Bank [opinions](#) on legislative proposals implementing the EU AML and CTF action plan. Although it welcomes the legislative proposals, it recommends several amendments.

On 4 March 2022, the Financial Action Task Force ("FATF") [adopted](#) amendments to Recommendation 24 of its International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The amendments strengthen Recommendation 24 on transparency and beneficial ownership of legal persons to ensure greater transparency about the ultimate ownership and control of legal persons and to mitigate the risks of their misuse. FATF expects all countries to implement the updated standards promptly.

Commission Delegated [Regulation \(EU\) 2022/229](#), which amends the list of high-risk third countries with strategic AML and CTF deficiencies under MLD4 came into force on 13 March 2022. For more information please see our client update, [Cayman Islands and the EU AML High-Risk Third Countries List](#)

On 24 March 2022, the EBA published a [letter](#) to the EU co-legislators on the views of AML / CTF experts from competent authorities on the EU AML and CTF action plan. It summarises the views of the experts on the proposed Regulation establishing the new EU AML Authority ("AMLA") and the proposed latest AML Directive ("MLD6") and Regulation.

On 31 March 2022, the European Parliament's Economic and Monetary Affairs Committee ("ECON") adopted its [report](#) on the proposed Regulation on information accompanying transfers of funds and certain cryptoassets. Cryptoassets' transfers would need to be traced and identified to prevent their use in money laundering, terrorist financing, and other crimes. The adopted text is the draft mandate for MEPs to negotiate the proposed Regulation with the Council of the EU.

1.8 IFR and IFD Update

The Investment Firms Directive ([EU](#) 2019/2034 ("IFD")) and the Investment Firms Regulation ([EU](#) 2019/2033 ("IFR")) introduced a new prudential regime for MiFID investment firms across the EU that were subject to the Capital Requirements Regulation ([EU](#) 575/2013 ("CRR")) and the Capital Requirements Directive ("CRD"). The [law of 21 July 2021](#) transposed IFD into Luxembourg law and implements IFR. On 21 September 2021, Irish transposing regulations (the European Union

(Investment Firms) Regulations 2021 and the European Union (Investment Firms) (No 2) Regulations 2021) came into to force.

Ireland

The [Central Bank \(Supervision and Enforcement\) Act 2013 \(Section 48\(1\)\) \(Investment Firms\) \(Amendment\) Regulations 2022](#) align general reporting requirements for MiFID investment firms with the classification of MiFID investment firms under the IFD from 21 February 2022.

EU

On 31 January 2022, the following RTS on prudential requirements for investment firms under the IFR came into force:

- Commission Delegated Regulation [\(EU\) 2022/25](#) supplementing the IFR with RTS that specify the methods for measuring the K-factors referred to in Article 15 of the IFR.
- Commission Delegated Regulation [\(EU\) 2022/26](#) supplementing the IFR with RTS specifying the notion of segregated accounts to ensure client money's protection in the event of an investment firm's failure.

On 9 February 2022, [Commission Delegated Regulation \(EU\) 2022/76](#) supplementing the IFR with regard to RTS specifying adjustments to the K-factor 'daily trading flow' coefficients came into force.

On 11 March 2022, the European Commission adopted a [Delegated Regulation](#) with RTS on the disclosure of firms' investment policy under the IFR. The RTS specify uniform disclosure formats and associated instructions for the disclosure requirements in Article 52. The Council of the EU and the European Parliament will now scrutinise it.

On 14 March 2022, Commission Delegated Regulation [\(EU\) 2022/244](#) setting out RTS specifying the amount of total margin for the calculation of the K-factor 'clear margin given' (K-CMG) under the IFR entered into force.

On 21 March 2022, the EBA's following consultations closed:

- [Consultation paper](#) on updating the guidelines on the benchmarking exercises on the remuneration practices, the gender pay gap and approved higher ratios under the CRD IV Directive (EU) 2013/36
- [Consultation paper](#) on updating its guidelines on the data collection exercises regarding high earners under Article 75(3) of the CRD IV Directive and Article 34(4) of the IFD.
- [Consultation paper](#) on draft guidelines on the benchmarking exercises on remuneration practices and the gender pay gap under Article 34(2) of the IFD. The EBA explains that the approach taken in the draft guidelines for investment firms is consistent with the corresponding guidelines for banks.

On 29 March 2022, Commission Delegated Regulation [\(EU\) 2022/389](#) laying down implementing technical standards ("ITS") on the format, structure, contents list and annual publication date of the information to be disclosed by competent authorities in accordance with Article 57(4) of the IFD came into force.

1.9 Cryptoassets: EU and Irish Regulatory Warnings and MiCA

On 17 March 2022, the ESAs issued a [warning](#) that cryptoassets are not a suitable investment or payment method for most retail consumers. The statement highlights that these assets are not suitable for most retail consumers as an investment or as a means of payment or exchange due to their volatility. That warning was followed by a [similar warning](#) from the Central Bank on 22 March 2022 in which it commented that "*cryptoassets are highly risky and speculative, and may not be suitable for retail customers... people need to be alert to the risks of misleading advertisements, particularly on social media, where influencers are being paid to advertise crypto assets*".

For more information see our client update, [Irish and EU Regulators Warn Retail Investors of Risks of Investing in Cryptoassets](#)

On 23 March 2022, the European Parliament published the [text](#) of the report adopted by ECON on 14 March 2022 on the European Commission's legislative proposal for a Regulation on markets in cryptoassets ("MiCA") reflecting a decision to enter into interinstitutional negotiations. Once a provisional political agreement is reached between their negotiators, the Council and the Parliament will formally adopt MiCA.

MiCA will establish a new EU legal framework for cryptoassets that are not covered by existing EU financial services legislation and introduce specific rules for stablecoins (which are divided into electronic money (e-money) tokens and asset-referenced tokens).

On 31 March 2022, the first Irish regulated QIAIFs were granted permission to take exposure to cryptoassets. For more information see [UCITS and AIFMD Update](#) above.

1.10 UK Overseas Fund Regime in Force

The UK overseas fund regime ("OFR") came into effect on 23 February 2022. The OFR allows investment funds domiciled overseas to be sold to UK retail investors. The OFR comprises two separate equivalence regimes for retail investment funds. Under these equivalence regimes, HM Treasury has the power to make a decision which effectively declares that another country's regime for investment funds is equivalent to the UK regime. Once HM Treasury has made an equivalence determination for a particular country, an investment fund domiciled in that country may apply to the UK Financial Conduct Authority for recognition. After these steps have been completed, the funds can be marketed to retail or professional investors (depending on the route used).

For more information see [United Kingdom's Overseas Fund Regime in Effect](#)

1.11 ESMA Updated MMF Guidelines on Stress Test Scenarios and MMF Regulation Reform

On 25 January 2022, the European Systemic Risk Board ("ESRB") published a [recommendation](#) (dated 2 December 2021) to the European Commission on the reform of money market funds ("MMFs"). It recommends that, in the context of its MMF Regulation ([EU 2017/1131](#) review, the Commission should:

- Require all low-volatility net asset value MMFs to have a fluctuating net asset value ("NAV") and repeal the regulatory thresholds in Article 34(1)(a) and (b) of the MMF Regulation.
- Reduce liquidity transformation by incorporating new liquidity requirements intended to diversify asset portfolios and introducing obligations on MMF managers to hold public debt assets.

- Impose on redeeming and subscribing investors the cost of their redemptions and subscriptions. The constitutional documents of MMFs should contain at least one of three liquidity management tools: anti-dilution levies, liquidity fees and swing pricing for MMFs with a fluctuating NAV.
- Enhance monitoring and stress-testing frameworks.

The ESRB requests the Commission to communicate the actions undertaken in response to the recommendation by 31 December 2023.

On 14 February 2022, ESMA published a [final report](#) on guidelines on stress test scenarios under Article 28 of the MMF Regulation. It contains the updated guidelines and the calibration of scenarios for 2021. The shocks have been calibrated to be severe, plausible and consistent with European Central Bank and ESRB projections, taking into account COVID-19. The [ESRB adverse scenario](#) for the guidelines (dated December 2021) were also published.

MMFs and their managers are expected to measure the impact of the common reference stress scenarios in the guidelines. On the basis of the measurements, the reporting template in Article 37 of the MMF Regulation should be sent with quarterly reports to the relevant NCA. The new 2021 parameters will have to be used for the first reporting period following the application of the updated guidelines.

The guidelines will be translated and will apply two months after the publication of the translations. ESMA plans to publish a consultation on revising section 4.8 of the guidelines by Q2 2022.

On 16 February 2022, ESMA issued an [opinion](#) with proposed reforms to the regulatory framework for EU MMFs. The proposals will improve the resilience of MMFs by addressing in particular liquidity issues and the threshold effects for constant net asset value ("CNAV") MMFs. In addition, ESMA is proposing complementary reforms aimed at enhancing MMFs' preparedness for a crisis. These include enhancements of reporting requirements and the stress testing framework, as well as clarification of the requirements on external support and new disclosure requirements linked to the rating of MMFs.

1.12 ESMA - Scope for Improvement in Funds' Liquidity Stress Testing

ESMA has carried out a supervisory engagement with investment funds together with NCAs. The exercise focused on liquidity risk in corporate debt and real estate funds, with the results showing that the funds included in the scope of the analysis do not pose any substantial risk for financial stability.

While the overall degree of compliance is satisfactory, ESMA's [report](#) issued on 30 March 2022 also highlights some room for improvement and continued monitoring, especially on the liquidity stress testing and valuation of less liquid assets. Many NCAs reported that management companies were able to manage episodes of valuation uncertainty in March 2020 and that they have not identified any strong valuation issue for the funds in the scope of the exercise.

1.13 MiFID II / MiFIR Update

The [Markets in Financial Instruments Directive \(EU\) 2014/65](#) ("MiFID II") and the [Markets in Financial Instruments Regulation \(EU\) 600/2014](#) ("MiFIR") apply from 3 January 2018.

Ireland

On 31 January 2022, the Central Bank updated the [statement for MiFID Investment Firms](#) authorised to deal on own account or to underwrite financial instruments on a firm commitment basis (MiFID

activities (3) or (6)). It sets out its expectations following the EBA publication of two final draft regulatory technical standards relating to the authorisation of MiFID investment firms as credit institutions under Article 8a(1) of Directive (EU) 2013/36.

The [Central Bank \(Supervision and Enforcement\) Act 2013 \(Section 48\(1\)\) \(Investment Firms\) \(Amendment\) Regulations 2022](#) align general reporting requirements for MiFID investment firms with the classification of MiFID investment firms under the IFD and are effective from 21 February 2022.

The [European Union \(Markets in Financial Instruments\) \(Amendment\) Regulations 2022](#) came into operation on 28 February 2022 and give effect to Directive [\(EU\) 2021/338](#) the MiFID II 'Quick Fix' or Amending Directive which is part of the Capital Markets Recovery Package. They amend MiFID to reduce the information on costs and charges to be provided to professional investors and eligible counterparties. Paper-based investment information will also be phased out, except for retail clients if they ask to continue to receive it. In addition, the regulations allow the bundling of research costs when it comes to research on small and mid-cap issuers.

EU

On 3 January 2022, ESMA published a [final report](#) on guidelines on aspects of the appropriateness and execution-only requirements under MiFID II. They aim to enhance clarity and foster convergence in the application of certain aspects of the appropriateness and execution-only requirements and will apply from six months of the date of their publication on ESMA's website in all EU official languages.

On 12 January 2022, the European Commission adopted a [Delegated Regulation](#) amending Delegated Regulation (EU) 2017/583 which contains RTS on the adjustment of liquidity thresholds and trade percentiles used to determine the size specific to the instrument applicable to certain non-equity instruments under MiFIR (RTS 2). The Council and the European Parliament will now consider it.

On 27 January 2022, ESMA published a [consultation](#) on draft guidelines on aspects of the suitability requirements under MiFID II which closes on 27 April 2022. It builds on ESMA's current 2018 guidelines on suitability. These are being reviewed following the adoption by the European Commission of amendments to Delegated Regulation (EU) 2017/565 (MiFID II Delegated Regulation) to integrate sustainability factors, risk and preferences into certain organisational requirements and operating conditions for investment firms.

On 28 January 2022, ESMA published updated [Q&As](#) on transparency topics which includes a new Q&A on the responsibility to verify the double volume cap under Article 5 of MiFIR.

On 28 January 2022, ESMA also published a [consultation](#) to assist it in producing an opinion to clarify provisions in the MiFID II on multilateral systems and the perimeter for trading venue authorisation. It closes on 29 April 2022. ESMA plans to publish a final report in Q3 2022.

On 2 February 2022, ESMA issued a [supervisory briefing](#) setting out its expectations under the MiFID II framework for firms that use tied agents. It provides guidance to market participants on how to comply with the MiFID II provisions on tied agents, with specific focus on cases where these agents are legal persons and cases where they are controlled by or have close links to other entities, including third-country entities.

On 8 February 2022, ESMA [launched](#) a CSA with NCAs on the costs and charges disclosures under MiFID II. It focuses on information provided to retail clients and NCAs will have to review how firms ensure that these disclosures are timely, fair, clear and not misleading; are based on accurate data and disclose inducements.

On 8 February 2022, the European Commission adopted amendments to RTS clearing and derivative trading obligations under EMIR and MiFIR in light of benchmark transition (see *EMIR Update* for more details).

On 10 March 2022, ESMA published a peer review report on the supervision of cross-border activities of investment firms that assessed how NCAs supervise the investment services that investment firms and credit institutions provide to retail clients under the freedom to provide services under Article 34 of MiFID II. The jurisdictions covered were the Netherlands, Germany, Czech Republic, Luxembourg, Cyprus and Malta. ESMA's findings included that home NCAs' supervision of their firm's cross-border activities was not sufficiently effective. Cyprus was singled out as having the highest number of complaints relating to firms' cross-border activities.

On 11 March 2022, ESMA published a [letter](#) to the European Commission on the legislative proposals for amendments to MiFIR and MiFID II. In it ESMA sets out its technical comments on issues including: consolidated tape providers; equity and non-equity transparency; and data reporting.

On 14 March 2022, ESMA published [updated guidance](#) on the annex to its opinion determining transparency for third-country trading venues under MiFIR. In the context of the EU sanctions on Russia, trading venues established in Russia are considered inactive from 14 March 2022 until further notice.

On 24 March 2022, the European Commission published a [Delegated Regulation](#) supplementing MiFID II with RTS specifying the content of position management controls by trading venues. It was developed under the MiFID II Amending Directive (EU) 2021/338 as part of the post-COVID-19 recovery package. It specifies the content of position management controls taking into account the characteristics of the trading venues concerned. The Council and the European Parliament will now consider it.

On 24 March 2022, the European Commission adopted an [Implementing Regulation](#) amending Implementing Regulation (EU) 2017/1093 laying down ITS on the format of commodity derivative position reports by investment firms and market operators under MiFID II.

On 27 March 2022, Commission Delegated Regulation (EU) 2022/466 supplementing MiFIR by specifying criteria for derogation of the principle that approved publication arrangements ("APAs") and approved reporting mechanisms ("ARMs") are supervised by ESMA came into force. ESMA has direct authorisation and supervisory powers over data reporting services providers ("DRSPs"), except for those ARMs and APAs that, by way of derogation from MiFIR due to their limited relevance for the internal market, are subject to authorisation and supervision by a NCA.

On 28 March 2022, ESMA published two final reports proposing targeted amendments to RTS 1 and RTS 2 under MiFIR to clarify and simplify the transparency regime for equity and non-equity instruments:

- [Report](#) on the review of Delegated Regulation (EU) 2017/587 (RTS 1) (equity transparency).
- [Report](#) on the review of Delegated Regulation (EU) 2017/583 (RTS 2) (non-equity transparency).

The European Commission has three months to decide whether to endorse the proposed amendments.

On 29 March 2022, ESMA published its final report on draft RTS on the management body of DRSPs under Article 27f(5) of MiFIR. The draft RTS specify criteria for the sound and prudent management of DRSPs as well as for their operational effectiveness under MiFIR and will apply to all DRSPs. The Commission is expected to adopt a Delegated Regulation within three months. Following adoption, the text will be subject to review by the European Parliament and the Council.

On 31 March 2022, ESMA published a [final report](#) on guidelines on certain aspects of the remuneration requirements under MiFID II that will apply six months from their publication on ESMA's website in all EU official languages. The guidelines enhance clarity in the implementation of certain aspects of the MiFID II remuneration requirement and will replace the existing 2013 guidelines,

1.14 PRIIPs Update

On 10 January 2022, [Delegated Regulation \(EU\) 2021/2268](#) amending Regulation [\(EU\) 2017/653](#) ("PRIIPs KID Delegated Regulation") RTS on the underpinning methodology and presentation of performance scenarios, the presentation of costs and the methodology for the calculation of summary cost indicators, the presentation and content of information on past performance and the presentation of costs by PRIIPs offering a range of options for investment and alignment of the transitional arrangement for PRIIP manufacturers offering units of funds referred to in Article 32 of the PRIIPs Regulation [\(EU\) 1286/2014](#) as underlying investment options with the prolonged transitional arrangement in that Article came into force. It states it is to apply from 1 July 2022 except Article 1, point 13 which applies from 1 January 2022.

However, on 17 March 2022, the European Commission adopted a [Delegated Regulation](#) amending the RTS in the PRIIPs KID Delegated Regulation on the extension of the transitional arrangement in Article 14(2) and amending the RTS in Delegated Regulation [\(EU\) 2021/2268](#) to change the date of application of that Regulation from 1 July 2022 to 1 January 2023.

It also extends the transitional arrangements under Regulation [\(EU\) 2021/2268](#) that are consistent with the extended transitional arrangements in Article 32 of the PRIIPs Regulation to allow PRIIPs manufacturers that offer investment funds as the only underlying investment options, or alongside other investment options, to continue using, for the purposes of producing PRIIPs KIDs, key investor information documents produced under Articles 78 to 81 of the UCITS Directive until 31 December 2022.

The Council of the EU and the European Parliament will now scrutinise the Act. If neither object, it will enter into force 20 days after its publication in the Official Journal of the EU.

1.15 Benchmarks Regulation and LIBOR Update

The [European Union \(Indices Used as Benchmarks in Financial Instruments and Financial Contracts or to Measure the Performance of Investment Funds\) \(Amendment\) Regulations 2022](#) came into force on 22 January 2022 in Ireland and amend the European Union (Indices Used as Benchmarks in Financial Instruments and Financial Contracts or to Measure the Performance of Investment Funds) Regulations 2017 to exclude certain spot foreign exchange benchmarks from the scope of the Regulations, in accordance with Article 2(2)(i) of the Benchmarks Regulation [\(EU\) 2016/1011](#) ("BMR"). They also provide a mechanism by which the Central Bank having consulted with the

Minister for Finance, may designate a replacement for a benchmark, where the majority of contributors to which are located within the State, in accordance with Article 23c of the BMR.

On 28 January 2022, ESMA published updated [Q&As](#) on the BMR adding a new Q&A 8.6 on Requirements for users: temporary disruptions under Article 28(2) of the BMR.

On 31 January 2022, the CSSF published [circular 22/796](#) confirming that it will apply the ESMA [guidelines on methodology oversight function and record keeping](#) under the BMR and integrate them into its administrative practice and regulatory approach. The guidelines were published on 7 December 2021 and apply from 31 May 2022.

On 16 February 2022, the European Commission adopted two Delegated Regulations supplementing the BMR: one specifies the procedure for measures applicable to the supervision by ESMA of certain benchmark administrators; and the other specifies the applicable fees and penalties. The Council of the EU and the European Parliament will now scrutinise them.

On 4 March 2022, the European Commission updated its [webpage](#) on EU labels for benchmarks and benchmarks' ESG disclosures to provide details of a study on the feasibility, minimum standards and transparency requirements of an EU ESG benchmark label. It is considering introducing a new ESG benchmark label.

LIBOR

Following benchmark reform, EONIA and LIBOR ceased at the end of 2021. USD LIBOR is to continue until June 2023. The following are now in force from 1 and 3 January 2022 respectively:

- Commission Implementing Regulation ([EU 2021/1847](#)) on the designation of a statutory replacement for certain settings of CHF LIBOR. It designates compound rates of Swiss Average Rate Overnight ("SARON") as the replacement rate for certain tenors of CHF LIBOR.
- Commission Implementing Regulation ([EU 2021/1848](#)) on the designation of a replacement for the benchmark EONIA. It designates the Euro short-term rate (€STR) as the replacement rate for EONIA.

1.16 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.

There have been a number of developments over the quarter:

On 14 January 2022, ESMA published an [updated methodology](#) for mandatory peer reviews relating to CCP authorisation and supervision under EMIR.

On 8 February 2022, the European Commission adopted:

- A [Delegated Regulation](#) amending the RTS in Delegated Regulation (EU) 2015/2205 as regards the transition to new benchmarks referenced in certain OTC derivative contracts. It will remove from the clearing obligation those classes of derivatives that reference EONIA, GBP LIBOR or JPY LIBOR as they no longer meet the relevant conditions in EMIR. It will also bring within the CO classes of OTC interest rate derivatives referencing ESTR, SOFR, SONIA or TONA that certain CCPs have been authorised to clear.

- A [Delegated Regulation](#) amending the RTS in Delegated Regulation (EU) 2017/2417 as regards the transition to new benchmarks referenced in certain OTC derivative contracts. It will remove from the derivatives trading obligation those classes of derivatives that currently reference GBP LIBOR or USD LIBOR, as they will no longer meet the condition laid down in Article 32(1) of MiFIR.

The Council of the EU and the European Parliament will now scrutinise them.

On 10 February 2022, Commission Implementing Decision ([EU](#)) [2022/174](#) determining, for a limited period of time, that the regulatory framework applicable to CCPs in the UK is equivalent to EMIR came into force. It will apply from 1 July 2022 (when the current Implementing Decision ends) and will expire on 30 June 2025. The Implementing Decision specifies that under Article 25 of EMIR, the legal and supervisory arrangements of the UK applicable to CCPs already established and authorised in the UK are considered to be equivalent to the requirements in EMIR.

The Commission's February 2022 targeted [consultation](#) on a review of the EU central clearing framework closed on 8 March 2022.

On 25 March 2022, ESMA published a [series](#) of updates on the recognition of CCPs established in third countries ("TC-CCPs") under EMIR. ESMA has completed the tiering and review of the recognition decisions of 25 TC-CCPs. For a number of TC-CCPs, ESMA is still waiting for additional clarifications to finalise the recognition process review. A [list](#) of recognised TC-CCPs is on ESMA's website. It also decided to extend the application of recognition decisions under Article 25 of EMIR for three CCPs established in the UK to 30 June 2025.

On 25 March 2022 ESMA also published a [final report](#) on guidelines for the transfer of data between TRs under EMIR and SFTR that will apply from 3 October 2022.

On 30 March 2022, ESMA published a number of memoranda of understanding following the recent updates on the recognition of CCPs established in TC-CCPs under EMIR.

On 31 March 2022, ESMA's January 2022 [consultation paper](#) on draft amendments to Commission Delegated Regulation (EU) 153/2013 with regard to RTS on requirements for CCPs, including requirements to limit the procyclicality of margin requirements under EMIR closed.

1.17 CSSF Circular on Teleworking Update

On 31 March 2022, the CSSF published [circular 22/804](#) updating [circular 21/769](#) on governance and security requirements for supervised entities to perform tasks or activities through telework (remote work). Circular 21/796 will come into force on 1 July 2022 and will apply in all types of working conditions. The earlier requirement that working conditions must return to normal before this circular applies to CSSF supervised entities has been removed. For more information on circular 21/769, see our [Q2 2021 quarterly update](#)

1.18 Reactivation of Notifications on Fund Issues and Large Redemptions - CSSF

On 8 March 2022, the CSSF issued a [communication](#) advising that certain large IFMs have been contacted by the CSSF and are required to notify it ("IFM Notification") of significant issues in respect of investment funds managed by them. An IFM Notification must be made through the eDesk on the occurrence of:

- Significant events / issues affecting the functioning of the investment funds managed by the IFM (e.g. valuation, liquidity, etc.), including the impact of restrictive measures in response to the current situation in Ukraine if applicable; and
- Larger redemptions at the level of Luxembourg regulated investment funds managed by the IFM (i.e. daily net redemptions exceeding 5% of the NAV, net redemptions over a calendar week exceeding 15% of the NAV and / or the application of gates / deferred redemptions).

1.19 CSSF White Paper on DLT and Blockchain

On 24 January 2022, the CSSF published a [white paper](#) on distributed ledger technology ("DLT") and blockchain in response to the increasing engagement by both financial and non-financial institutions, such as start-ups, with the CSSF over their potential use of DLT. It guides interested professionals in the conduct of their DLT due diligence process and its use in the provision of services in the Luxembourg financial sector. The paper summarises the key common characteristics and different types of DLTs and presents the main actors and roles identified in a DLT project along with examples. It also highlights some of the main governance and technical risks by proposing key questions and recommendations for professionals to consider when performing their risk analysis and due diligence processes.

1.20 EU Securitisation Regulation

On 3 February 2022 ESMA [launched](#) its new STS register for the notification of securitisations under the Securitisation Regulation ([EU](#) 2017/2402). It replaces the previous interim solution of a simple, transparent and standardised ("STS") list on the ESMA website. Note that the interim STS notification is still applicable to synthetic STS securitisations.

On 2 March 2022, the EBA published a [report](#) on recent developments and challenges associated with introducing sustainability to the securitisation market and makes several recommendations to the European Commission on the development of a sustainability framework for the securitisation market.

It concludes that it would be premature to establish a dedicated framework for green securitisation but suggests that the upcoming EU GBS regulation should apply to securitisation, provided that the EU GBS requirements apply at originator level (instead of at the issuer / securitisation special purpose entity level). It also recommends amending the Securitisation Regulation to extend voluntary 'principal adverse impact disclosures' to non-STS securitisations. Based on this the Commission will submit a report to the European Parliament and the Council, together with a legislative proposal if appropriate.

For more information see [ESG – Sustainable Securitisation Report](#)

On 18 March 2022, the European Central Bank ("ECB") published a [guide on the notification of securitisation transactions](#) with a notification template for all securitisation transactions originated after 1 April 2022. The non-binding guide sets out the notification practices that the ECB expects directly supervised banks acting as originators or sponsors of private and public securitisation transactions to follow to enable it monitor compliance with risk retention, transparency requirements and the ban on resecuritisation.

1.21 CSDR Update

On 16 March 2022, the European Commission published a legislative proposal for a Regulation amending the Central Securities Depositories Regulation ([EU](#) 909/2014 ("CSDR")) on settlement discipline, cross-border provision of services, supervisory co-operation, provision of banking-type

ancillary services and requirements for third-country central securities depositories. The proposed changes relate to:

- Introducing a 'two-step approach' under which mandatory buy-ins could become applicable if the penalties regime alone does not improve settlement fails in the EU.
- Adjusting the conditions under which central securities depositories ("CSDs") can access banking services by amending the threshold for these services and broadening the range of service providers.
- Simplifying passporting requirements for CSDs.
- Improving co-operation between supervisors by requiring the establishment of colleges of supervisors for certain CSDs to increase consistent supervision.
- Oversight of activities of third-country CSDs. The Council of the EU and the European Parliament will now consider it.

1.22 SFTR Update

On 28 January 2022, ESMA published updated [Q&As](#) on complying with reporting requirements under the Securities Financing Transactions Regulation ([EU](#) 2015/2365 ("SFTR")). ESMA has amended its Q&A on reporting of settlement fails.

On 25 March 2022, ESMA published a [final report](#) on guidelines for the transfer of data between TRs under EMIR and SFTR. The guidelines need to be translated and will become applicable on 3 October 2022.

On 1 April 2022, ESMA published a further updated version of its [Q&As](#) dated 22 March 2022 on complying with reporting requirements under SFTR amending Q&A 12 on the currency of the overview and margin reports.

1.23 Irish Investment Funds Statistics: Q4 2021

The main points to note in the Central Bank's [Q4 2021 statistics](#) issued in March 2022 are as follows:

- The NAVs of Irish-resident funds reached an all-time high of €4,067bn at end-December 2021.
- The total NAV increased by €288bn (8%) in Q4 2021. This increase was split between 44% net investor inflows and 56% valuation gains.
- Equity funds NAV increased in the quarter by 9% to €1,425bn, with €19bn net transactions and €93bn revaluations. The valuation gains of equity funds accounted for 32% of the overall gains of IFs.
- In bond, MMF, and hedge funds, the majority of the NAV increase was driven by investor inflows. In contrast, the majority of the increase in NAV for equity, mixed, real estate, and other funds was due to revaluation gains.
- In Q4 2021, there was a large increase in both net transactions and revaluations in holdings of equity securities, at €55bn and €115bn respectively.

1.24 Luxembourg Undertakings for Collective Investment Statistics

The main points to note in the CSSF's [February 2022](#) update for regulated Luxembourg funds are as follows:

- Total assets held by Luxembourg UCITS, Part II UCIs, SIFs and SICARs ("Luxembourg Investment Funds") amounted to € 5,545.049 billion as at 28 February 2022.

- The number of CSSF regulated Luxembourg Investment Funds active in the market totals 3,465.
- Of the 3,465 active Luxembourg Investment Funds, 2,270 entities have adopted an umbrella structure and together have a total of 13,229 sub-funds. The remaining 1,195 are structured as stand-alone funds.
- As at February 2022 there were a total of 14,424 fund units.
- During February 2022 there were more subscriptions than redemptions in equity funds and more redemptions than subscriptions in fixed-income funds.

In addition the number of Luxembourg RIAFs reached 1,760 as of 1 April 2022.

2 Tax

EU

2.1 EU Annex II "Grey List" of Monitored Jurisdictions in Taxation Matters

On 24 February 2022, at a meeting of a competition sub-committee of the Council of the EU, the British Virgin Islands and Bermuda were added to Annex II to the EU list of non-cooperative jurisdictions in taxation matters bringing the number of countries on Annex II to 24. Annex II's purpose includes the monitoring of listed jurisdictions on their commitments to improve certain legal and regulatory matters.

There are no specific sanctions as a consequence of being on Annex II. However, there are potential reporting requirements for (i) large EU multinationals with undertakings in an Annex II jurisdiction; and (ii) EU investors holding securities issued by certain securitisation entities established in an Annex II jurisdiction.

First, under the Directive on country-by-country reporting ([EU\) 2021/2101](#) a multinational group is required publicly to disclose certain financial and other information about its EU activities as well as in certain third countries. Those third countries include those that have been on Annex II for two consecutive years. This Directive must be transposed into the national law of EU Member States by 22 June 2023 so the reporting obligation does not arise until then.

Secondly, the Securitisation Regulation governs securitisation special purpose entities ("SSPEs"). Following a 2021 amendment to Article 4, where an SSPE is established after 9 April 2021 in an Annex II jurisdiction, an investor in that SSPE must notify the investment in securities issued by that SSPE to the Member State tax authorities where the investor is resident for tax purposes. The notification procedure will differ in each Member State. In Ireland, for example, Irish Revenue have stated that there will be a simple form to file through their online service in the near future. While most Securitisation Regulation obligations relate to EU institutional investors only, this obligation applies to all EU natural and legal persons. Further, while Article 4 references securities instruments only a securitisation position can take other forms and it would be prudent to consider all securitisation positions and not just debt securities as being subject to the reporting obligation.

From a practical viewpoint, some service providers and financial institutions (including AIFs with AML / KYC compliance requirements) will require enhanced due diligence if there is a nexus to an Annex II entity.

2.2 EU Withholding Tax Consultation

On 1 April 2022, the European Commission opened a [second public consultation](#) on the introduction of a common EU-wide system for withholding tax on dividend and interest payments. It aims to remove tax barriers to facilitate cross-border investments and allow tax authorities to exchange information and cooperate and will close on 28 June 2022.

The initiative intends to ensure the proper functioning of the Capital Markets Union, facilitate cross-border investment and prevent tax abuse. It aims to do this by making the withholding tax relief procedures for non-resident investors more efficient and increasing the ability of tax administrators to identify investors that abuse rights under double tax treaties.

Stakeholders are asked for views on a number of significant points for the funds industry, including: (i) whether the current function of withholding tax refund procedures hinder cross-border investment in the EU securities market; (ii) whether there is a preference for a relief-at-source system, refund procedure system or a combination of the two mechanisms; (iii) which payments should be covered by the relief-at-source system; (iv) what measures are the most effective for simplifying and streamlining withholding tax refund procedures; (v) who should make the refund applications; and (vi) whether it would be appropriate to broaden DAC (the EU Directive on Administrative Cooperation requiring an automatic exchange of certain information) to include an automatic exchange of financial information on payments received.

Luxembourg

2.3 EU Interest Limitation Rules: Scope Extended to Regulated Luxembourg Securitisation Vehicles

On 9 March 2022, the Luxembourg Parliament published a draft law, which proposes to revoke an exemption available for EU regulated Luxembourg securitisation vehicles ("SVs") from Luxembourg's interest limitation rules ("ILRs"). The draft law is expected to enter into force on 1 January 2023. Once enacted, these EU Luxembourg SVs will be subject to the ILRs and may be at risk of increasing their Luxembourg corporate tax exposure, in light of potential deductibility limitations on payments made to SV investors. The draft law stems from a formal notice letter sent by the European Commission in 2020 advising Luxembourg to remove the ILRs exemption applicable to EU regulated Luxembourg SVs.

For more information see our client update, [Interest Limitation Rules: Extended to Luxembourg EU Regulated Securitisation Vehicles](#)

2.4 New One-Time Tax Reporting Obligation for Corporate Investment Vehicles

On 20 January 2022, the Luxembourg tax authorities issued a tax circular clarifying the reporting obligations for certain corporate Luxembourg investment vehicles. This reporting is part of Luxembourg's new regime that imposes a 20% levy on income and gains derived, directly or indirectly, from real estate located in Luxembourg. These reporting obligations apply even if the investment vehicle never invested, directly or indirectly, in Luxembourg real estate. All Luxembourg exempt

corporate alternative investment vehicles are generally required to file a one-time reporting obligation by 31 May 2022. Failure to comply could trigger penalties of up to €10,000.

For more information see our client update, [Luxembourg: New One-Time Tax Reporting Obligation for Investment Vehicles](#)

3 Listings

3.1 LEI Codes for Umbrella Structures

A Legal Entity Identifier ("LEI") is a 20 digit code that is unique to a legal entity and provides basic information about the entity. From 25 March 2022, LEI providers such as Euronext Dublin must collect data in relation to umbrella fund relationships. With effect from this date, when applying for a new LEI or renewing an existing LEI for a sub-fund, it is a mandatory requirement to also provide the LEI code for the umbrella fund. This will apply to all applications and it will not be possible to proceed with an LEI application without the umbrella LEI data.

Further information on the GLEIF Fund Relationship Policy can be found at [Policy on Fund Relationships and Guidelines for the registration of Investment Funds in the Global LEI System](#)



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