



MAPLES
GROUP

Funds & Investment Management Update – Ireland and Luxembourg

Quarterly Update | July – September 2022

Table of Contents

1	Legal & Regulatory	3
1.1	UCITS and AIFMD Update	3
1.2	Central Bank (Individual Accountability Framework) Bill 2022 – SEAR	4
1.3	Sustainable Finance Update	4
1.4	AML Developments	6
1.5	Central Bank Outsourcing Register	7
1.6	CSSF Notification Template – UCI Administration Tasks	8
1.7	CSSF Communication on Pre-marketing Notifications	8
1.8	IFR and IFD Update	8
1.9	Money Market Funds Update	9
1.10	MiFID II / MiFIR Update	9
1.11	Benchmarks Regulation Update	10
1.12	EMIR Update	11
1.13	Whistleblowing Law Changes	12
1.14	EU Securitisation Regulation	12
1.15	CSDR Update	13
1.16	IOSCO Report on Retail Investor Education and Sustainable Finance	14
1.17	SFTR Update	14
1.18	Irish Investment Funds Statistics: Q2 2022	14
1.19	Luxembourg Undertakings for Collective Investment Statistics	15
2	Tax	15
2.1	Budget 2023	15
2.2	Luxembourg Transfer Pricing Audits on the Rise	16
3	Listings	16
3.1	Updated Investment Funds Listing Rules for UCITS	16
	Contacts	17
	About the Maples Group	18

1 Legal & Regulatory

1.1 UCITS and AIFMD Update

Ireland

On 1 July 2022, the Central Bank of Ireland ("Central Bank") published updated guidance on its pre-submission requirements for certain types of Qualifying Investor AIF ("QIAIF") products and confirmed the 24-hour approval process for all other QIAIFs, including loan-originating QIAIFs. For more information, see our update [Welcome Enhancements to the QIAIF Pre-Submission Process](#)

UK

The UK Financial Conduct Authority confirmed on 14 July 2022 that UCITS funds marketing in the UK must continue to provide UK investors with the traditional UCITS Key Investor Information Document ("KIID"). This applies to UCITS registered under the UK's Temporary Marketing Permissions Regime and UCITS approved to market in the UK under section 272 of the Financial Services and Markets Act 2000. For more information, see our update [UCITS KIID to be Retained for UK Investors](#).

EU

On 8 July 2022, the European Securities and Markets Authority ("ESMA") published its annual reports on penalties and measures issued under the UCITS Directive 2009/65/EC and AIFMD imposed by national competent authorities ("NCAs") from 1 January 2021 to 31 December 2021.

In the [UCITS report](#), 12 NCAs imposed a total of 61 penalties. The total aggregated value imposed amounted to approximately €38,784,536. Eight NCAs imposed a total of 64 measures, with a single NCA using 35 measures. Fifteen NCAs did not impose any sanction during this period. In the [AIFMD report](#), 10 NCAs imposed a total of 78 penalties. The total aggregated value amounted to about €42,902,420. Six NCAs imposed a total of 62 measures, with one NCA communicating 33 measures. Eighteen NCAs did not impose any sanction.

On 20 July 2022, ESMA published updated [Q&As](#) on the application of AIFMD adding the following:

- Section VI: Depositories – New Q&A 15 and Q&A 16 on reconciliations.
- Section VIII: Delegation – New Q&A 4 on responsibility for compliance with marketing communications requirements.

ESMA also published updated [Q&As](#) on UCITS Directive adding the following sections:

- Section X: Depository – New Q&A 7 on the reconciliation frequency for funds trading on a daily basis and new Q&A 8 on reconciliations with tri-party collateral managers.
- Section XIII: Delegation – New Q&A 1 on the responsibility to ensure compliance with the rules governing marketing communications.

On 9 August 2022, the European Central Bank ("ECB") published an [opinion](#) on the European Commission's proposed directive amending AIFMD and the UCITS Directive on delegation arrangements, liquidity risk management, supervisory reporting, provision of depository and custody services and loan origination by AIFs. It focuses on AIFMD and sets out views on: liquidity management and macroprudential tools, reporting and the European System of Central Banks' access to detailed data on the AIF sector. The ECB also states it would have welcomed the proposed directive covering issues not addressed by AIFMD. For example, the operationalisation and development of macroprudential tools applied ex ante as a means of reducing risks to the financial system that are posed by AIFs, as well as ensuring that detailed data on individual AIFs, are made available to the ECB and other central banks.

1.2 Central Bank (Individual Accountability Framework) Bill 2022 – SEAR

The Department of Finance published the long-awaited [Central Bank \(Individual Accountability Framework\) Bill 2022](#) on 28 July 2022 and it is progressing through the legislative process.

It will amend current Central Bank legislation and significantly change the regulation and supervision of regulated financial service providers and persons performing controlled functions and pre-approval controlled functions. It introduces a Senior Executive Accountability Regime ("SEAR"), new types of business and conduct standards, and an enhanced fitness and probity ("F&P") regime. The Central Bank's administrative sanctions procedure will also be amended to accommodate the new provisions. The Central Bank will launch a public consultation on the implementation of the Individual Accountability Framework once the Bill is enacted.

1.3 Sustainable Finance Update

Ireland and Luxembourg

On 1 January 2023, the Level 2 measures under the Sustainable Finance Disclosure Regulation (EU) 2019/2088 ("SFDR") will come into effect. Among other things, these measures will require affected funds to make amendments to their fund documentation, including their prospectuses. The Central Bank announced in September 2022 that it will use a fast-track process. The Central Bank issued a further [communication](#) on 4 October 2022 for UCITS and AIF pre-contractual documentation updates on the SFDR Level 2 measures. Filings must be made no later than 1 December 2022 with this deadline applying to all UCITS, RIAIFs and QIAIFs.

Equally in Luxembourg, the Commission de Surveillance du Secteur Financier ("CSSF") [announced](#) on 27 July 2022 a fast track procedure for the examination and approval of updated pre-contractual documentation on SFDR Level 2 measures and the Taxonomy Regulation (EU) 2020/852 ("Taxonomy Regulation") if certain conditions are satisfied. The deadline for filing updated pre-contractual documentation is 31 October 2022. On 6 September 2022 the CSSF [informed](#) financial market participants that it published a confirmation letter for [UCITS](#) and [AIFs](#) that must accompany the updated pre-contractual documentation filing.

In Ireland, the [European Union \(Undertakings for Collective Investment in Transferable Securities\) \(Amendment\) \(No.2\) Regulations 2022](#) came into operation on 12 September 2022 and transposed the UCITS Delegated Directive (EU) 2021/1270 on sustainability risks and sustainability factors to be taken into account for UCITS. In Luxembourg [CSSF Regulation 22-05](#) came into force on 31 July 2022 and also transposed Directive (EU) 2021/1270 which imposes obligations on UCITS management companies to:

- Integrate sustainability risks in the management of UCITS;
- Include in their conflicts of interest procedures a consideration of any conflicts which may arise as a result of the integration of sustainability risks;
- Take into account sustainability risks as part of the due diligence in the selection and ongoing monitoring of investment; and
- Capture details of procedures to manage sustainability risks in the risk management policy.

EU

On 28 July 2022, the Joint Committee of the European Supervisory Authorities ("ESAs") published a [report](#) on the extent of voluntary disclosure of principal adverse impact ("PAI") under Article 18 of SFDR. The report's conclusions are that:

- The extent of compliance with voluntary disclosures under Article 4(1)(a) varies significantly across jurisdictions and financial market participants ("FMPs"), and it is difficult to identify definite trends.
- Disclosures for FMPs that do not take into account PAI of investment decisions on sustainability factors under Article 4(1)(b) are lacking in detail, and FMPs largely fail to provide clear reasons why they do not do so.
- NCAs have reported low levels of disclosure of the degree of alignment with the objective of the Paris Agreement, with disclosures being vague and high level.

It also includes recommendations to the European Commission and NCAs.

The ESAs explain that, as the detailed regulatory technical standards ("RTS") on these disclosures are not yet applicable and given that NCAs' supervisory practices on voluntary disclosures by FMPs are still emerging, the indications of good examples of best practices and recommendations in the report are preliminary and will be complemented further in subsequent reports. Future reports will also cover voluntary disclosures under Article 7(1), which will apply fully from 30 December 2022.

A number of EU legislative measures on sustainable finance became effective on 1 August 2022. The various delegated directives and delegated regulations complement the obligations in SFDR and the Taxonomy Regulation. For more information, see our update [New Mandatory Consideration of ESG Factors for EU Investment Fund Managers](#).

On 4 August 2022, Commission Delegated Regulation (EU) 2022/1214 amending Delegated Regulation (EU) 2021/2139 as regards economic activities in certain energy sectors and Delegated Regulation (EU) 2021/2178 as regards specific public disclosures for those economic activities ("Taxonomy Complementary Climate Delegated Act") came into force. It will apply from 1 January 2023 and sets out the conditions under which nuclear and natural gas energy activities can be included in the list of economic activities under the Taxonomy Regulation. These conditions 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.

On 14 August 2022, [Commission Delegated Regulation \(EU\) 2022/1288](#) came into force. It supplements SFDR with regard to RTS specifying: the content and presentation of the information on the "do no significant harm" principle, the content, methodologies and presentation of information on sustainability indicators and adverse sustainability impacts; and the content and presentation of the information on the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports. It will apply from 1 January 2023.

The RTS apply to FMPs when disclosing sustainability-related information under SFDR. They specify the exact content, methodology and presentation of the information to be disclosed to improve its quality and comparability. FMPs will have to provide detailed information about how they tackle any possible negative impacts their investments may have on the environment and society in general.

On 9 September 2022, the ESAs published a [new set of questions](#) addressed to the European Commission on SFDR interpretations. They relate to issues such as the definition of "sustainable

investments" under SFDR, carbon benchmarks and what "consideration" of PAIs means in practice. There is no indication of when the Commission will publish its response.

On 29 September 2022, the European Banking Authority ("EBA") published its [work programme](#) for 2023. It has one "horizontal" priority on environmental, social and governance ("ESG") issues. It will continue to deliver on mandates included in the CRD IV Directive, Capital Requirements Regulation, the Investment Firms Regulation and the Investment Firms Directive, and those stemming from the European Commission's action plan and Sustainable Finance Strategy.

On 30 September 2022, the ESAs published a [joint final report](#) on draft RTS on information to be provided in pre-contractual documents, on websites and in periodic reports about the exposure of financial products to investments in fossil gas and nuclear energy activities.

The draft RTS amend the RTS in Delegated Regulation (EU) 2022/1288 (SFDR RTS), which supplement SFDR and aim to ensure that disclosures about the degree to which investments are in taxonomy-aligned activities provide full transparency about investments in fossil gas and nuclear energy activities, in particular on the proportion those investments represent within all investments and in environmentally sustainable economic activities. The ESAs have also proposed some minor technical corrections to the SFDR RTS. The ESAs [confirmed](#) that the disclosures in the proposed RTS are in line with the Complementary Climate Delegated Act. They add that the Commission will scrutinise the draft RTS and endorse them within three months of their publication. The ESAs have left it to the Commission to insert an expected application date when they will endorse the draft RTS.

On 30 September 2022, the Joint Committee of the ESAs published its [work programme](#) for 2023. The ESAs intend to submit amendments to the adopted Commission Delegated Regulation supplementing SFDR on RTS on content and presentation of information (SFDR RTS) following the requests of the European Commission in April 2022; and will monitor the application of SFDR to determine whether the optional implementing technical standards ("ITS") on marketing communications are required, as well as Q&As or other Level 3 tools to promote supervisory convergence on the practical application of the SFDR.

1.4 AML Developments

Ireland

The Central Bank published a [bulletin](#) on 11 July 2022 on virtual asset service providers ("VASPs"), to assist applicant firms in strengthening both their applications for registration and their anti-money laundering and countering the financing of terrorism ("AML/CFT") frameworks. For more information, see our update [MiCA and Central Bank Feedback on VASP Registrations](#)

On 17 August 2022, the Central Bank signalled that the new template for the Beneficial Ownership Register for Certain Financial Vehicles allowing for the collection of PPS numbers (and Central Bank reference numbers as applicable) in order to verify the information delivered to the register will be made available in Q4 2022.

The [European Union \(Anti-Money Laundering: Central Mechanism for Information on Safe-Deposit Boxes and Bank and Payment Accounts\) \(Amendment\) Regulations 2022](#) came into force on 13 September 2022 and make minor clarificatory amendments to the European Union (Anti-Money Laundering: Central Mechanism for Information on Safe-Deposit Boxes and Bank and Payment Accounts) Regulations 2022 that establish a central database of payment accounts, bank accounts and safe-deposit boxes held with credit institutions.

Luxembourg

On 22 July 2022, the CSSF provided further clarifications on the method by which UCITS, UCIs subject to part II of the [law of 17 December 2010](#), SIFs and SICARs may file the self-assessment

questionnaire ("SAQ"), the separate report ("SR") and the management letter ("ML") required under CSSF [circular 21/790](#).

The various reports are available for filing with the CSSF through its Collective Investment Sector Reporting Tool within the CSSF's online [eDesk portal](#) ("e-Desk Portal"), for funds with year-ends between 30 June 2022 and 30 November 2022. It clarifies how the directors or managers of funds in scope of circular 21/790 or service providers may file the SAQ, SR and ML.

On 25 August 2022, the CSSF [published](#) an updated FAQs on the AML/CFT report for CSSF supervised Luxembourg investment funds and Luxembourg investment fund managers. It outlines the CSSF's minimum requirements around the report's content and the filing procedures.

On 12 October 2022, the Luxembourg's Registration Duty, Estate and VAT Authority, the Administration de l'enregistrement, des domaines et de la TVA ("AED") [confirmed](#) that all unregulated AIFs subject to its AML/CFT supervision are legally required to appoint two individuals responsible for AML/CFT:

- A "responsable du respect des obligations" ("RR"); and
- A "responsable du contrôle du respect des obligations" ("RC").

For more information, see our update [Luxembourg: Important clarification for AIFs regarding appointment of RR/RC](#).

EU and International

On 20 July 2022, the Financial Action Task Force ("FATF") published a [report](#) on partnering in the fight against financial crime, which focuses on data protection, technology and private sector information sharing. FATF states that collaboration and information sharing helps financial institutions build a clearer picture of criminal networks and suspicious transactions, and also better understand, assess and mitigate their money laundering, terrorist financing and proliferation financing risks. It sets out recommendations to help jurisdictions and private sector entities that are considering increasing private sector information sharing avoid common pitfalls. The recommendations for the private sector are: making use of privacy-enhancing technologies, ensure harmonised data, pursue data protection by design, engage early with data protection authorities and identify metrics to measure success.

One of FATF's strategic priorities for 2023 in the EBA's [work programme](#) (published in September 2022) is to initiate the handing over of its work relating to AML/CTF compliance and supervision to the new AML/CFT Authority ("AMLA"). This transfer of power is expected in 2024.

1.5 Central Bank Outsourcing Register

The Central Bank issued their [outsourcing registers and submission requirements](#) in August 2022. As set out in its December 2021 Cross-Industry Guidance on Outsourcing and feedback statement, the Central Bank expects each regulated financial service provider to establish and maintain an outsourcing register. The Central Bank have defined the scope and for those firms that have to file the completed register via the ONR by 7 October 2022. In addition to templates, the Central Bank has also provided guidance notes, which include instructions for the completion and submission of the register across each sector via the ONR.

For more information, see our update [CP138: Central Bank of Ireland Publishes Cross-Industry Outsourcing Guidance](#).

1.6 CSSF Notification Template – UCI Administration Tasks

On 24 August 2022, the CSSF published a [notification template](#) to be used when a critical or important UCI administration task is delegated under point 100 of [CSSF circular 22/811](#) from this date. Entities in scope of this circular and, where applicable, [CSSF circular 22/806](#) must notify the CSSF in advance of:

- Planned, new critical or important outsourcing arrangements;
- Material changes to existing critical or important outsourcing arrangements; and
- Changes to outsourcing arrangements that lead to an outsourced function becoming critical or important.

This template replaces the previous form. For more information on the CSSF [notification template](#) to be used when a critical or important business process ("BPO") is outsourced under points 59 and 60 of CSSF circular 22/806, see our update [Funds and Investment Management Update Ireland and Luxembourg Q2 2022](#).

1.7 CSSF Communication on Pre-marketing Notifications

On 8 September 2022, the CSSF announced that from 15 September 2022 the pre-marketing notifications are exclusively available on the e-Desk Portal for the following entities:

- AIFMs engaging in pre-marketing in Luxembourg or in another Member State in accordance with Article 28-1 of the law of 12 July 2013 on alternative investment fund managers, as amended; and
- Managers of Luxembourg European Venture Capital Funds and European Social Entrepreneurship Funds in accordance with Article 4a of Regulation (EU) 345/2013 or Article 4a of Regulation (EU) 346/2013 respectively.

A [user guide](#) on the procedures and the required documentation to be submitted on the e-Desk Portal was also published.

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 ([EU 2013/36](#) ("CRD")).

On 20 July 2022, the EBA and ESMA published a [final report](#) on joint guidelines on common procedures and methodologies for the supervisory review and evaluation process for investment firms under IFD. The guidelines will be translated into the official EU languages and published on the ESMA and EBA websites. The deadline for NCAs to report whether they comply will be two months after publication of the translations.

On 21 July 2022, the EBA published a [final report](#) on draft RTS relating to Pillar 2 add-ons for investment firms under IFD which clarify how NCAs should measure risks or elements of risks that investment firms face or pose to others, which are not covered or not sufficiently covered by the own funds requirements in parts 3 or 4 of IFR.

On 26 July 2022, Commission Delegated Regulation ([EU 2022/1159](#)) supplementing IFR with regard to RTS on the disclosure of firms' investment policies came into force. The RTS specify uniform disclosure formats and associated instructions for the disclosure requirements in Article 52 of IFR. The disclosure required includes information on the proportion of voting rights attached to the shares

held directly or indirectly by the investment firms, information on their voting behaviour, an explanation of votes and the ratio of proposals put forward and approved, information on the use of proxy advisor firms and information on their voting guidelines.

On 29 July 2022, the EBA published its [final report](#) containing guidelines on the liquidity requirements exemption for investment firms under Article 43(4) of IFR. They cover the investment services and activities that make an investment firm eligible for the exemption; the criteria a competent authority should assess before granting the exemption; and guidance for competent authorities when granting and withdrawing the exemption. The guidelines apply from 29 September 2022.

On 25 September 2022, Commission Delegated Regulation ([EU](#)) 2022/1455 supplementing IFR with regard to RTS on fixed overheads requirements came into force. The RTS specify:

- Elements to be deducted by investment firms from their total expenses used for the calculation of the fixed overheads requirement.
- Additional deductions from total expenses by commodity and emission allowance dealers.
- The conditions for determining whether a material change has occurred in the activity of an investment firm.

1.9 Money Market Funds Update

The Central Bank published a [notice of intention](#) on 4 July 2022 in relation to the ESMA "Guidelines on stress test scenarios under the MMF Regulation" confirming they expect full compliance with the Guidelines from 4 July 2022. The Central Bank will, in due course, consult on the incorporation of a provision in the Central Bank UCITS Regulations and AIF Rulebook that all money market fund managers adhere to the Guidelines.

1.10 MiFID II / MiFIR Update

Ireland

The [European Union \(Markets in Financial Instruments\) \(Amendment\) \(No. 3\) Regulations 2022](#) (published in July 2022) come into force on 22 November 2022 and amend the European Union (Markets in Financial Instruments) Regulations 2017 ("2017 Regulations") to provide for the integration of sustainability factors into product governance obligations, as required by Commission Delegated Directive (EU) 2021/1269 amending Directive (EU) 2017/593.

The [European Union \(Markets in Financial Instruments\) \(Amendment\) \(No. 4\) Regulations 2022](#) amend the 2017 Regulations from 23 March 2023 to extend the definition of financial instrument to include those instruments issued by way of distributed ledger technology ("DLT"), as required by Regulation (EU) 2022/858 on a pilot regime for market infrastructures based on DLT.

Luxembourg

The [Grand-ducal Regulation of 27 July 2022](#) will come into force on 22 November 2022 and amend the [Grand-ducal Regulation of 30 May 2018](#) in order to transpose Directive (EU) 2021/1269.

EU

On 8 July 2022, ESMA published the [results](#) of a common supervisory action ("CSA") with NCAs on the application of product governance rules under the [Markets in Financial Instruments Directive \(EU\) 2014/65](#) ("MiFID II"). The findings show that firms generally define a target market for the products they manufacture and distribute and that firms follow the five target market categories list in the ESMA guidelines. However, in some cases the target market definition appears to a formalistic exercise as it is done at an insufficiently granular level using unclearly defined terms. ESMA also

found that the definition does not always translate into a compatible distribution strategy that enables the product to reach the identified target market.

On 8 July 2022, ESMA also published a [consultation](#) on the product governance rules under MiFID II. ESMA proposes to update the guidelines in light of regulatory developments, including the 2021 CSA on product governance results noted above; it closes on 7 October 2022. On 8 July 2022, ESMA published its [fourth annual report](#) on sanctions and measures imposed under MiFID II.

On 12 July 2022, ESMA published an [opinion](#) on the classification of third-country counterparties in weekly position reports under MiFID II. It clarifies how third-country financial entities should be classified.

On 29 July 2022, the European Parliament's Economic and Monetary Affairs Committee ("ECON") published a [draft report](#) with suggested amendments on the Commission's proposal to amend the Markets in Financial Instruments Regulation (EU) 600/2014 ("MiFIR") as regards enhancing market data transparency, removing obstacles to the emergence of a consolidated tape, optimising the trading obligations and prohibiting receiving payments for forwarding client orders.

On 4 August 2022, Commission Implementing Regulation (EU) 2022/1220 laying down implementing technical standards ("ITS") with regard to the format in which branches of third-country firms and competent authorities have to report the information referred to in Article 41(3) and (4) of MiFID II came into force.

On 15 August 2022, three new sets of regulations on commodity derivatives position limits, management controls and reporting under MiFID II came into force.

On 23 September 2022, ESMA published its [final report](#) and revised guidelines on certain aspects of the suitability requirements under MiFID II. The guidelines were reviewed following the European Commission adopting amendments to Commission 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. The changes relate to sustainability preferences and organisational requirements. The guidelines will apply six months after they are translated into the official languages of the EU and published on ESMA's website. For more information, see our update [MiFID Sustainability Preferences - Putting ESG at the Centre of the Sales Process](#).

On 27 September 2022, ESMA published a [statement](#) reminding investment firms of the impact of inflation in the context of providing investment services to retail clients and the relevant requirements under MiFID II.

Over the quarter, ESMA updated its MiFID II Q&As on [market structures](#) and [transparency topics](#), its MiFID II and MiFIR Q&As on [commodity derivatives](#), and its [MiFIR data reporting](#) Q&As.

1.11 Benchmarks Regulation Update

On 19 August 2022, ESMA published its [response](#) to the European Commission's May 2022 consultation on the regime applicable to the use of benchmarks administered in a third country under the Benchmarks Regulation (EU) 2016/1011 ("BMR").

ESMA notes that few jurisdictions have followed a similar regulatory approach as the EU with regard to the provision and use of benchmarks. These third countries (with the exception of the UK) have opted for a narrower scope of regulation and supervision, limited to the most critical or systemic financial benchmarks in their respective jurisdictions, whereas the BMR covers all benchmarks used in the EU.

During the current transition period, there is an uneven playing field for EU administrators, who must comply with the BMR requirements, whereas their non-EU competitors do not. Therefore, ESMA proposes to improve the BMR regulatory and supervisory framework, as well as the EU benchmark labels. These include removing restrictions on the use of third country benchmarks while ensuring a level playing field between EU and third country administrators and introducing an EU ESG benchmark label.

On 9 September 2022, ESMA closed its July 2022 [consultation](#) on amendments to Commission Delegated Regulation (EU) 2018/1645 supplementing the BMR with regard to RTS for the form and content of an application for recognition. ESMA's review is intended to align the information provided in a recognition application with the changes introduced in 2019. Regulation (EU) 2019/2175 changes resulted in the deletion of the member state of reference and the transfer to ESMA of responsibilities for recognising and supervising third-country benchmark administrators from January 2022. The review also aims to ensure the application for recognition includes all relevant information to enable ESMA to assess whether the applicant has established all the arrangements to fulfil the BMR's requirements.

ESMA expects to publish a final report and submit the draft technical standards to the European Commission for endorsement in Q4 2022.

1.12 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 8 July 2022, ESMA published a [statement](#) on applications by third-country central counterparties ("TC-CCPs") for recognition under EMIR. ESMA has started processing applications for recognition made by TC-CCPs established in jurisdictions for which the European Commission has recently adopted an equivalence decision and plans to start adopting decisions granting recognition once the relevant conditions are met. ESMA intends to expedite the process for signing memorandums of understanding with the relevant third-country competent authorities and the EU NCAs and EU authorities.

ESMA states that, until it has taken a decision on recognition under EMIR, a TC-CCP that applied under the EMIR transition provisions, and currently provides clearing services in a member state, may continue to provide those services in that member state.

On 13 July 2022, the European Systemic Risk Board ("ESRB") published a [letter](#) sent to the European Commission on data quality issues and risks for financial instability in the context of the Commission's intention to amend EMIR to increase the attractiveness of EU clearing and strengthen the EU CCP supervisory framework. The ESRB highlights the difficulties that persistent data quality issues pose and proposes improvements to the quality of the data reported.

On 19 July 2022, ESMA published its [2021 annual peer review](#) of EU central CCP supervision which focused on the effectiveness of NCA supervisory practices in assessing CCP compliance with EMIR's requirements on business continuity, in particular, in remote access mode. ESMA found that participating NCAs broadly met the supervisory expectations although some aspects of business continuity in remote access mode were not always assessed. The report identifies 10 best practices and states that further consideration could be given to whether EMIR could be strengthened with respect to business continuity (not addressed by the proposed Regulation on digital operational resilience for the financial sector ("DORA")).

On 28 September 2022, ESMA published a [feedback report](#) on the review of the clearing thresholds ("CTs") under EMIR. It considers the feedback that ESMA did not address in its June 2022 report (which proposed a change in the CT for commodity derivatives from €3 billion to €4 billion). It also includes updated statistics and outlines initiatives by ESMA and NCAs on the application of CTs. ESMA considers that:

- The EMIR amendments proposed in its April 2022 high-level response to the European Commission's consultation on the EMIR targeted review would address many of the points raised by respondents.
- The more urgent aspects on CT for commodity derivatives were addressed in the June 2022 report. Accordingly, for the other asset classes, ESMA does not advise further changes to the CT levels.

On 30 September 2022, ESMA's July 2022 [consultation](#) on clearing and derivative trading obligations in view of the 2022 status of the benchmark transition closed. It sought views on draft RTS on the discontinuation of EONIA and LIBOR rates and the development of a new set of risk-free rates. ESMA is proposing to amend delegated Regulations (EU) 2015/2205 and (EU) 2017/2417 which contain RTS on the clearing obligation and on the derivative trading obligation under EMIR and MiFIR respectively.

Implementing decisions on EMIR equivalence of the regulatory framework for CCPs in Colombia and Taiwan were published in the Official Journal of the EU on 30 September 2022 and came into force on 20 October 2022.

1.13 Whistleblowing Law Changes

The [Protected Disclosures \(Amendment\) Act 2022](#) was enacted on 21 July 2022 and will come into force on 1 January 2023. It transposes the Whistleblowing Directive (EU) 2019/1937 into Irish law, further strengthens the protection of whistleblowers under the Protected Disclosures Act 2014 and imposes new obligations on employers and others who receive protected disclosures. Whistleblower protection refers to the reporting of wrongdoing related to EU law, such as tax fraud, money laundering or offences related to public procurement, product and transport safety, environmental protection, public health and consumer and data protection.

The new obligations will require all private sector organisations with 250 or more employees to establish formal procedures for the making of protected disclosures, although it will eventually apply (from 17 December 2023) to organisations with between 50 and 249 employees. However, certain employers, including those in the public sector and certain financial services firms regardless of number of employees, must comply with the obligations in the Act from the date of entry into force. For more information, see [The Protected Disclosures \(Amendment\) Act 2022 – Prepare for Implementation – Update for Employers in Ireland](#).

1.14 EU Securitisation Regulation

On 28 July 2022, the EBA [published](#) a consultation on draft RTS specifying the criteria for the underlying exposures in simple, transparent and standardised ("STS") securitisations to be considered homogeneous; it closed on 28 October 2022. These draft RTS amended Delegated Regulation (EU) 2019/1851, specified criteria for homogeneity for asset-backed commercial paper ("ABCP") and non-ABCP securitisations, and apply to all STS securitisations, including ABCP, non-ABCP and on-balance sheet securitisations. The new draft RTS carried over the provisions on homogeneity set out in the existing RTS with some modifications.

On 15 August 2022, Commission Delegated Regulation [\(EU\) 2022/1301](#) came into force. It amended the RTS in Delegated Regulation (EU) 2020/1226 to reflect the information to be provided in accordance with the STS notification requirements for on-balance-sheet synthetic securitisations.

The amendments are:

- Specify the information originators must submit to ESMA to comply with the STS notification requirements;
- Distinguish between those STS criteria for which a simple confirmation is sufficient and those for which greater explanation is required; and
- Restrict the information to be published in STS notifications for securitisations where no prospectus is required to non-sensitive commercial information.

On 20 September 2022, the EBA [announced](#) its publication of final draft RTS specifying and, where relevant, calibrating the minimum performance-related triggers for STS on-balance-sheet securitisations that feature non-sequential amortisation. Under the EU Securitisation Regulation [\(EU\) 2017/2402](#), STS on-balance-sheet securitisations must feature a sequential amortisation system to be eligible for the STS label. However, by way of derogation, an STS on-balance-sheet securitisation featuring non-sequential priority of payments could be eligible for the STS label if payment priority reverts to sequential payments in order of seniority on the occurrence of certain triggers relating to the performance of the underlying exposures (Article 26c(5)).

The final draft RTS incorporates feedback on its original draft received during the December 2021 consultation on it and:

- Includes greater details for the two mandatory backward-looking triggers provided in Article 26c(5) of the EU Securitisation Regulation.
- Specifies one additional backward-looking trigger and one additional forward-looking trigger.
- Provides that the trigger levels should be determined by the parties on a transaction-by-transaction basis on specified criteria to be followed by the parties.

The final draft RTS will be submitted to the Commission, the European Parliament and Council before publication in the Official Journal, after which they will become effective.

1.15 CSDR Update

On 6 July 2022, the European Commission adopted a draft [Delegated Regulation](#) that amends RTS on settlement discipline in Commission Delegated Regulation (EU) 2018/1229 to suspend the application date of the mandatory buy-in ("MBI") regime under the Central Securities Depositories Regulation [\(EU\) 909/2014](#) ("CSDR"). The Council and the Parliament will now scrutinise it.

On 1 August 2022 the ECB published its [opinion](#) on the proposed regulation amending CSDR. There are a couple of areas highlighted within the ECB's paper that should be of interest to members, including specific observations around the settlement discipline and in particular MBIs, whereby they suggest "it would be preferable to discard the possibility of mandatory buy-ins altogether". However, they also make a number of points should MBIs be retained, such as the removal of securities financing transactions from the scope of MBIs and appropriate implementation time for market participants. They also ask for the potential effects of MBIs on financial stability and settlement

efficiency to be considered and for the ECB to be consulted on any MBI mechanism being adopted. The opinion was published in the Official Journal of the EU on 26 September 2022.

On 4 August 2022, ESMA published an updated [Q&A](#) on the implementation of CSDR. Both changes relate to the Q&As on settlement discipline. ESMA has updated a question on the calculation of cash penalties and added a question on the bilateral cancellation facility.

On 9 September 2022, ESMA's July 2022 [consultation](#) on amendments to Article 19 of the RTS on settlement discipline in Commission Delegated Regulation (EU) 2018/122 (which supplements CSDR) closed. Article 19 provides for a specific collection and distribution process for cash penalties to be carried out by CCPs) to ensure that, in respect of settlement fails relating to cleared transactions where CCPs interpose themselves between counterparties, cash penalties are not applied to CCPs. ESMA intends to finalise the amendments in Q4 2022.

1.16 IOSCO Report on Retail Investor Education and Sustainable Finance

On 31 August 2022, the Board of the International Organization of Securities Commissions issued a [Report on Retail Investor Education in the Context of Sustainable Finance Markets and Products](#). It identifies recent developments in investor education on sustainable finance with a view to enhancing investor education and protection, and supporting the development of this growing financial market. To make informed decisions, retail investors need to understand the characteristics of such products and the report identifies some of the main challenges and sound practices for developing educational content on these matters.

1.17 SFTR Update

On 12 July 2022, SMA published a [third statement](#) on the implementation of legal entity identifier ("LEI") requirements for third-country issuers under the reporting regime in the Securities Financing Transactions Regulation ([EU](#)) 2015/2365 ("SFTR"). The third statement is considered necessary given the unsatisfactory level of LEI coverage globally and sets out ESMA's expectations to address the issue.

On 19 July 2022, ESMA published [updated Q&As](#) on complying with reporting requirements under SFTR. ESMA added new Q&As on the construction of a trade state report and reporting of valuation and collateral on the last day of a securities financing transaction.

On 22 September 2022, the International Capital Market Association published an updated [guide](#) to reporting repo transactions under both the EU and UK versions of SFTR. It includes six new questions and numerous further updates, reflecting new insights as well as additional ESMA guidance on the reporting of settlement fails. The guide also reflects ESMA's July 2022 updated Q&As.

1.18 Irish Investment Funds Statistics: Q2 2022

The main points to note in the Central Bank's [Q2 2022 statistics](#) issued in September 2022 are as follows:

- The net asset values ("NAVs") of Irish-resident funds continued to decline this year, falling to €3.692 trillion at end-June 2022. The total NAV decreased by €230 billion during the second quarter (5.9%).
- All fund types except hedge funds, real estate funds and MMFs showed NAV decreases during the quarter, driven by negative revaluations as investor flows remained steady. Equity, mixed,

real estate and other fund types saw positive net inflows in Q2 2022. Only MMFs and hedge funds had positive revaluations.

- Equity funds showed the largest declines in both percentage (-9.3%) and amount (-€128 billion) terms during the quarter. The decline was largely driven by revaluations (-€135 billion) with net inflows of €7 billion slightly offsetting the decline. Inflows were strongest in US dollar equity funds.

1.19 Luxembourg Undertakings for Collective Investment Statistics

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

- Total net assets held by Luxembourg UCITS, Part II UCIs, SIFs and SICARs ("Luxembourg Investment Funds") amounted to €5,300.361 billion as at 31 August 2022.
- The number of CSSF-regulated Luxembourg Investment Funds active in the market totals 3,413.
- Of the 3,413 active Luxembourg Investment Funds, 2,230 entities have adopted an umbrella structure and together have a total of 13,165 sub-funds. The remaining 1,183 are structured as stand-alone funds.
- As at August 2022, there were a total of 14,348 fund units.
- During August 2022, there were more redemptions than subscriptions in equity funds and fixed-income funds.

In addition the number of Luxembourg RIAFs reached 2,051 as of 3 October 2022.

2 Tax

Ireland

2.1 Budget 2023

The Irish Minister for Finance presented Budget 2023 on 27 September 2022. The Finance Bill was published on 20 October 2022 to implement the changes announced on Budget Day. There are changes to the tax reporting regime for investment limited partnerships and common contractual funds. There are also proposed changes which will impact the VAT position of Irish based AIFMs and managers who provide service to EU funds outside Ireland. For more information, see our update [Irish Finance Bill 2022 – Implications for International and Irish Business](#).

On Budget Day, the Minister announced a review of the tax treatment of the institutional real estate sector. The review will focus on Irish real estate investment trusts ("REITs") and authorised Irish real estate funds ("IREFs") and is likely to focus on the sustainable tax yield from REITs and IREFs as the Irish property sector continues to develop. A working group to consider the taxation of funds, life assurance policies and other investment products was also announced. There is speculation that this will be limited to the treatment of Irish investors in such products. No details have been published to date.

Luxembourg

2.2 Luxembourg Transfer Pricing Audits on the Rise

Over the past months, the Luxembourg tax authorities ("LTA") have been increasingly active in the transfer pricing space, requesting transfer pricing related documentation and evidence of economic substance. Similarly, the LTA has announced multiple new employment positions for transfer pricing professionals. These recent developments coincide with several high profile EU State aid cases focused on Luxembourg transfer pricing involving the Amazon Group and other multinational groups with Luxembourg in their structures. Therefore, Luxembourg companies and funds with transfer pricing implications should verify that their economic substance and transfer pricing documentation are up-to-date and conform to regulatory requirements.

3 Listings

3.1 Updated Investment Funds Listing Rules for UCITS

Following a 2021 consultation, Euronext Dublin amended the [Investment Funds Listing Rules for UCITS](#) with effect from 8 August 2022. Given the significant regulation and ongoing supervision which applies to UCITS funds, the decision was made to re-examine the listing rules to ensure they are fit for purpose, without compromising investor protection objectives. The rule changes reflect the highly regulated nature of UCITS products and also align the rules with other Euronext jurisdiction listing rules for UCITS.

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