



MAPLES  
GROUP

# Funds & Investment Management Update – Ireland and Luxembourg

**Quarterly Update | January - March 2024**

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# 1 Legal & Regulatory

## 1.1 UCITS and AIFMD Update

On 26 March 2024, Directive [\(EU\) 2024/927](#) amending AIFMD 2011/61/EU and the UCITS Directive 2009/65/EC relating to delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services, and loan origination by alternative investment funds ("AIFs") was published in the Official Journal of the EU ("OJ"). Known as AIFMD II, the directive will enter into force on 15 April 2024 and will have to be transposed by EU Member States by 16 April 2026.

The changes introduced aim to strengthen investor protection; improve access to finance from sources other than banks; tackle greenwashing; and help complete the capital markets union by limiting national approaches when it comes to marketing AIFs. One of the major enhancements under AIFMD II is the introduction of a pan-European loan origination regime for AIFs.

## 1.2 ELTIF 2.0

On 10 January 2024, Regulation [\(EU\) 2023/606](#) which revised the European Long-Term Investment Fund ("ELTIF") framework, came into effect across the EU. Commonly referred to as 'ELTIF 2.0', it aims to make ELTIFs more attractive by removing several regulatory obstacles. ELTIFs are EU AIFs managed by AIFMs that invest in long-term investments and can be distributed on a cross-border basis to both professional and retail investors.

On 6 March 2024, the European Commission [communicated](#) its intention to adopt the draft ELTIF regulatory technical standards ("RTS") proposed by the European Securities and Markets Authority ("ESMA") with certain amendments and sent a [letter](#) to ESMA on the proposed amendments. The Commission believes that ESMA's draft RTS do not sufficiently cater for the individual characteristics of different ELTIFs. Therefore, the Commission considers it needs to take a more proportionate approach to the provisions of the RTS, particularly on the calibration of the requirements relating to redemptions and liquidity management tools.

For more information please see [ELTIF 2.0 – A Welcome Communication on the Draft RTS from the European Commission](#)

### Ireland

On 11 March 2024, the Central Bank of Ireland ("Central Bank") published its framework to facilitate the establishment of Irish ELTIFs by way of an updated [AIF Rulebook](#) (with a new chapter 6 on ELTIF Requirements) and a [Feedback Statement](#) on its consultation paper CP155 on the proposed new ELTIF chapter. In addition, new application forms to assist applicants applying for authorisation have also been published.

For more information please see [ELTIF 2.0 in Ireland - the "24-hour ELTIF"](#)

## 1.3 Consultation on Consumer Protection Code Revision

The Central Bank (Individual Accountability Framework) Act 2023 enhances the regulation and governance of regulated financial service providers ("RFSPs") in Ireland. One aspect of the new

regime imposes obligations on all RFSPs with respect to expected standards of conduct ("Business Standards"); expected standards of conduct for every person within the fitness and probity regime ("Common Conduct Standards"); and additional standards of conduct for certain senior persons ("Additional Conduct Standards"). The Conduct Standards have applied since 29 December 2023 except for the Business Standards which will not be effective until the revised Consumer Protection Code ("Code") is implemented.

On 7 March 2024, the Central Bank published a [consultation](#) (CP158) on its proposals to revise the Code. Annexed to CP158 are two draft set of regulations which will replace the Code and two sets of draft guidance (Guidance on Securing Customers' Interests and Guidance on Protecting Consumers in Vulnerable Circumstances). In addition, new digital tools, explainers and guides to support consumers and firms in accessing the information that they need will be developed.

The first set of regulations will contain Standards for Business complemented by Supporting Standards for Business (giving further detail on firms' obligations under the Standards for Business). These will replace and expand the Code's existing General Principles.

The second set of regulations containing "General Requirements" will include new and existing requirements and protections set out on a cross-sectoral and a sector specific basis. It will also consolidate several existing Central Bank conduct regulations and codes (such as the Code of Conduct on Mortgage Arrears). The key changes to the Code include measures on: digitisation; informing effectively; mortgage credit and switching; unregulated activities; frauds and scams; vulnerability, and climate risk.

Comments are requested by 7 June 2024. The new regulations are to be finalised in early 2025, following which there will be a 12-month transition period. This means that the new framework is expected to apply from 2026.

## 1.4 Sustainable Finance Update

### Ireland

Published on 8 March 2024, the [2024 Ireland for Finance Action Plan](#) looks to further establish Ireland as the recognised global location of choice for specialist international financial services and focused on 13 key deliverables under the five themes including sustainable finance and contains a special edition on sustainable finance.

### Luxembourg

On 22 March 2024, the *Commission de Surveillance du Secteur Financier* ("CSSF") [outlined](#) its supervisory priorities for sustainable finance. Regarding asset managers the CSSF will continue to monitor compliance with the Sustainable Finance Disclosure Regulation (EU) 2019/2088 ("SFDR"), Commission Delegated Regulation (EU) 2022/1288, which supplements the SFDR regarding RTS on content and presentation of information ("SFDR Delegated Regulation") and the Taxonomy Regulation and focus on the below items on a risk-based approach:

- (a) organisational arrangements of investment fund managers ("IFMs"), including the integration of sustainability risks by financial market participants;
- (b) verification of the compliance of pre-contractual and periodic disclosures;
- (c) verification of the consistency of information in fund documentation and marketing material;
- (d) verification of the compliance of product website disclosure; and

(e) portfolio analysis.

## EU

On 29 January 2024, the EU Platform on Sustainable Finance published a [report](#) containing a compendium of market practices, looking at how the EU taxonomy and sustainable finance framework are helping financial and non-financial actors transition to net zero.

On 5 February 2024, the Council of the EU [announced](#) that it has reached provisional political agreement with the European Parliament on the [proposed Regulation](#) on the transparency and integrity of environmental, social and governance ("ESG") rating activities. The rules aim to introduce a common regulatory approach to enhance the integrity, transparency, responsibility, good governance, and independence of ESG rating activities, contributing to the transparency and quality of ESG ratings. This political agreement is subject to approval by the Council and the Parliament before going through the formal adoption procedure.

### 1.5 AML / CTF Developments

#### Ireland

On 28 March 2024, the Anti-Money Laundering Compliance Unit ("AMLCU") of the Department of Justice published [Anti-Money Laundering & Countering the Financing of Terrorism \("AML / CFT"\) – Guidelines for Designated Persons supervised by the Anti-Money Laundering Compliance Unit](#) to assist Designated Persons in understanding their obligations under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. The AMLCU welcomes feedback on the guidelines.

#### Luxembourg

On 29 February 2024, the CSSF published [Circular 24/854](#) 'Guidelines for the collective investment sector on the AML / CFT Summary Report RC'.

Each Luxembourg investment fund and IFM authorised by the CSSF must appoint an AML / CFT compliance officer, referred to in the French version of the Luxembourg law of 12 November 2004, as the *responsable du contrôle du respect des obligations* ("RC").

Each IFM and Luxembourg investment fund with a foreign IFM or which has not appointed an IFM, must file with the CSSF, an AML / CFT summary report prepared by the RC ("SRRC"), on an annual basis. The CSSF has now introduced a template SRRC which must be completed on the CSSF's online [eDesk](#) portal.

The SRRC must be filed with the CSSF within five months of the year-end of the supervised entity. For SRRCs covering the year which ended on 31 December 2023, an extended seven month filing deadline applies. Further information is available in the CSSF's [FAQ](#) and [Practical and technical guidance](#) on the SRRC.

#### EU and International

On 16 January 2024, the European Banking Authority ("EBA") published a [final report](#) with amending guidelines on customer due diligence ("CDD") and the factors credit and financial institutions should consider when assessing the money laundering ("ML") and terrorist financing ("TF") risk associated with individual business relationships and occasional transactions under Articles 17 and 18(4) of the Fourth Money Laundering Directive (EU) 2015/849 ("MLD4"). These amending guidelines extend the

original guidelines to cryptoasset service providers ("CASPs"), highlighting the ML and TF risk factors and mitigating measures that CASPs need to consider. The revised guidelines will apply from 30 December 2024 and will be translated and published on the EBA's website. The deadline for competent authorities to report whether they comply with the guidelines will be two months after the publication of the translations.

On 27 February 2024, the Financial Action Task Force ("FATF") published a [consultation](#) on draft revisions to FATF recommendation 16: Wire transfers. Responses are requested by 3 May 2024. Commission Delegated Regulation (EU) 2024/595, which supplements Regulation (EU) 1093/2010 with regard to RTS specifying the materiality of weaknesses, the type of information collected, the practical implementation of the information collection and the analysis and dissemination of the information in the AML / CFT central database known as EuReCa referred to in Article 9a(2) of that Regulation came into force on 7 March 2024.

On 11 March 2024, FATF published the [final version](#) of its risk-based guidance on the transparency and beneficial ownership of legal arrangements. The new guidance on recommendation 25 aims to help countries and the private sector better understand how transparency requirements apply to legal arrangements. It provides guidance on how to assess the money laundering and terrorist financing risks associated with trusts and similar legal arrangements.

On 12 March 2024, the EBA published a [call for advice](#) from the European Commission regarding RTS and guidelines under the future AML and CTF framework.

The Commission is seeking the EBA's technical advice on certain draft RTS and guidelines that should be developed by the future Anti-Money Laundering Authority ("AMLA") (to be based in Frankfurt) and adopted by the Commission.

The request for advice is provisional as the new framework has not yet entered into force. Following [provisional agreement](#) reached in January 2024 on the AMLA Regulation, the AML Regulation and the Sixth Money Laundering Directive ("MLD6") these acts are subject to legal revision prior to formal adoption by the European Parliament and the Council of the EU. Their publication in the Official Journal of the European Union ("OJ") is expected in summer 2024.

On 28 March 2024, FATF published the [implementation status](#) of recommendation 15 by all FATF members plus 20 jurisdictions (including Ireland and Luxembourg) with materially important virtual asset service provider ("VASP") activity. It notes that many countries have yet to fully implement recommendation 15 on regulating and supervising virtual assets and VASPs to prevent their misuse for illicit finance.

## **1.6 Central Bank Regulatory and Supervisory Outlook 2024**

On 29 February 2024, the Central Bank published [its Regulatory and Supervisory Outlook 2024](#) and accompanying Letter to the Minister for Finance. This is the first of what will be an annual report setting out the Central Bank's view on the key trends and risks facing the financial sector, along with the regulatory and supervisory priorities it has set in the context of those risks.

## **1.7 CSSF Circular 24/856 on NAV Calculation Errors and Other Breaches**

On 28 March 2024, the CSSF published [Circular 24/856](#), which will come into effect and repeal [Circular 02/77](#) from 1 January 2025. It details the guidelines to be observed by undertakings for collective investment ("UCI") subject to the CSSF's supervision as well as investment management

professionals operating in Luxembourg in the event of a net asset value ("NAV") calculation error, non-compliance with investment rules or other certain errors at the level of the UCI.

For more information please see [New CSSF Circular on NAV Calculation Error and Other Breaches](#)

## 1.8 CSSF FAQ on Virtual Assets

On 22 February 2024, the CSSF issued an updated [FAQ on virtual assets for undertakings for collective investment](#), which amended two FAQs to clarify that UCITS targeting investors other than well-informed investors and pension funds are not permitted to invest directly or indirectly in virtual assets and AIFs targeting well-informed investors may invest directly or indirectly in virtual assets.

## 1.9 CSSF deactivates Notifications on Funds Issues and Large Redemptions

On 25 February 2024, the CSSF decided to end the ad-hoc reporting requirement it had put in place in February 2022 because of the market conditions relating to the situation in Ukraine / Russia. While IFMs were required to provide their last reporting for the reference date 29 February 2024, they should continue to proactively advise the CSSF of any significant issues affecting their functioning or the investment funds managed by them. In the same press release, the CSSF advised that the reporting *Early Warning on Large Redemptions* has also been deactivated with immediate effect.

## 1.10 Cross Border Notifications under AIFMD and UCITS Directive

On 25 March 2024, the following regulations supplementing the UCITS Directive and AIFMD as regards notification to national competent authorities ("NCAs") by AIFMs and UCITS management companies of their cross-border activities were published in the OJ:

- (a) Commission Implementing Regulation ([EU](#)) 2024/910 laying down implementing technical standards ("ITS") for the application of the UCITS Directive with regard to the form and content of the information to be notified for cross-border activities of UCITS, UCITS management companies, the exchange of information between competent authorities on cross-border notification letters, and amending Regulation 584/2010. Template notifications are in Annexes I, II, III, IV, V, VI and VII. It will apply from 14 July 2024.
- (b) Commission Delegated Regulation ([EU](#)) 2024/911 supplementing the UCITS Directive with regard to RTS specifying the information to be notified in relation to the cross-border activities of management companies and UCITS. It sets out the information that managers should communicate to competent authorities under Articles 17, 18 and 20 of the UCITS Directive. It will apply from 25 June 2024.
- (c) Commission Delegated Regulation ([EU](#)) 2024/912 supplementing the AIFMD with regard to RTS specifying the information to be notified in relation to the cross-border activities of AIFMs. It sets out the information that managers should communicate to competent authorities under Article 33 of AIFMD. It will apply from 25 June 2024.
- (d) Commission Implementing Regulation ([EU](#)) 2024/913 laying down ITS for the application of the AIFMD with regard to the form and content of the information to be notified in respect of the cross-border activities of AIFMs and the exchange of information between competent authorities on cross-border notification letters. Template notifications are in Annexes I, II, III, IV and V. It will apply from 14 April 2024.

The regulations all enter into force on 14 April 2024 and apply from the dates set out above.

## 1.11 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.

### Ireland

The new reporting requirements under EMIR REFIT come into force from 29 April 2024. On 9 February 2024, the Central Bank [updated](#) their EMIR webpage to confirm that financial counterparties and non-financial-counterparties should engage with their report submitting entities and their TRs to ensure that they are in a position to report under the new reporting requirements as of 29 April 2024.

For more information, please see [EMIR REFIT – Impact on Irish Investment Funds](#)

### EU

On 2 February 2024, ESMA updated its [Q&As](#) on EMIR relating to ETDs reporting question; reporting under STM/CTM model; update of the client codes; reporting of a counterparty falling within scope of Article 1(4)(a) and (b); portability of schedules; and subsidiaries.

On 11 February 2024, Commission Delegated Regulation (EU) [2024/363](#) amending RTS in Delegated Regulation (EU) 2015/2205 as regards the transition to the Tokyo Overnight Average Rate (TONA) and the Secured Overnight Financing Rate (SOFR) benchmarks referenced in certain OTC derivative contracts came into force.

On 7 February 2024, the Council of the EU [announced](#) that it has reached provisional political agreement with the European Parliament on the legislative proposals amending EMIR intended to mitigate excessive exposures to third-country CCPs and improve the efficiency of EU clearing markets ("EMIR 3"). On 14 February 2024, it published the:

- (a) [Compromise text](#) for EMIR 3
- (b) [Compromise text](#) for the proposed Directive amending various directives on the treatment of concentration risk towards CCPs and the counterparty risk on centrally cleared derivative transactions ("Amending Directive")

The provisional political agreement is subject to approval by the Council and the Parliament before going through the formal adoption procedure.

On 27 February 2024, ESMA published a [final report](#) providing technical advice to the European Commission on revising the Fees Delegated Regulation (EU) 2020/1302 which further specifies the types and amount of fees and how they are to be paid by Tier 1 and Tier 2 CCPs.

On 7 March 2024, Commission Delegated Regulation (EU) 2024/818 amending the RTS in Delegated Regulation (EU) 153/2013 relating to temporary emergency measures on collateral requirements under EMIR came into force.

On 27 March 2024, ESMA published a [statement](#) on deprioritising supervisory actions relating to the clearing obligation for third-country pension scheme arrangements pending the final adoption and entry into force of EMIR 3.



## 1.12 Fitness and Probity Regime Review following IFSAT Decision

On 14 February 2024, the Central Bank [announced](#) that it will commission an independent review of its fitness and probity regime, following a Irish Financial Services Appeals Tribunal decision in *AB v Central Bank of Ireland* which identified fundamental procedural flaws in the way that the Central Bank's handled specific applications to perform pre-approval controlled functions. The outcome of the independent review will be published.

## 1.13 Corporate Sustainability Reporting Directive Standards

Commission Delegated Regulation ([EU](#)) [2023/2772](#) sets out the first set of EU sustainability reporting standards ("ESRS") under the Corporate Sustainability Reporting Directive 2022 ([EU](#)) [2022/2464](#) ("CSRD") and applies from 1 January 2024 for financial years beginning on or after 1 January 2024.

The CSRD amends and extends sustainability reporting requirements. It requires in-scope companies to disclose information on a broad range of sustainability matters relevant to their businesses, in line with the ESRS.

On 7 February 2024, the Council and the European Parliament [provisionally agreed](#) on a directive on the time limits for the adoption of sustainability reporting standards for certain sectors and for certain third-country undertakings amending the CSRD (which has yet to be transpose into Irish law). It will give more time for companies to prepare for the sectorial ESRS and for specific standards for large non-EU companies, which will be adopted in June 2026, two years later than the original date. The agreement reached now needs to be endorsed and formally adopted by both institutions.

## 1.14 Proposed Directive on Retail Investment Protection

On 21 March 2024, the European Parliament's Economic and Monetary Affairs Committee ("ECON") [announced](#) it had adopted its draft report on the proposed directive on retail investment protection. The proposed directive aims to improve access for retail investors to financial markets, as well as ensuring investor protection (particularly in relation to financial advice) and will amend several directives including MiFID II, the UCITS Directive and AIFMD. The [texts](#), which constitute Parliament's negotiating mandates, will be tabled for approval during the first plenary session in April 2024.

## 1.15 PRIIPs KIDs and ECON Report – Update

Since 1 January 2024, UCITS authorised prior to 1 January 2023 that are required to produce a key information document ("KID") for packaged retail and insurance-based investment products ("PRIIPs") must submit the KID through the Central Bank's portal.

For more information please see [PRIIPs KID – New Requirement to Submit to the CBI](#)

On 15 March 2024, the Joint Committee of the Joint Committee of the European Supervisory Authorities published [updated Q&As](#) on the KID requirements for PRIIPs as laid down in Commission Delegated Regulation (EU) 2017/653. Q&As have been added on:

- (a) Clarifying the term "PRIIPs open to subscription"
- (b) The types of product category regarding material risk assessments
- (c) Summary risk indicators
- (d) Performance scenarios

On 21 March 2024, ECON [announced](#) its adoption of its draft report on the proposed Regulation amending to the Regulation on KIDs for PRIIPs ("PRIIPs Regulation"). The [text](#) which sets out suggested amendments will be tabled for approval during the plenary session to be held between 22 and 25 in April 2024.

### **1.16 UK Statement on the Overseas Funds Regime - EEA UCITS Funds**

On 30 January 2024, the UK government published a [statement](#) granting an equivalence decision for EEA UCITS funds under the UK Overseas Funds Regime ("OFR"). This means that, subject to legislation being enacted, EEA UCITS funds may be marketed into the UK without needing to meet any additional UK requirements. The statement also confirms that the temporary marketing permissions regime, which was due to end on 31 December 2025, will be extended until the end of 2026.

For more information on this topic please see our [GRS Market Update Q1 2024](#)

### **1.17 Stress Test Scenarios under MMF Regulation**

On 6 March 2024, ESMA published the official translations, including the [English language version](#) of its 2023 guidelines on stress test scenarios under Article 28 of the Regulation on money market funds (EU) 2017/1131 ("MMF Regulation"). The guidelines in red text will apply from 6 May 2024 (that is, two months after publication of the translations). The other parts of the guidelines already apply from the dates specified in Articles 44 and 47 of the MMF Regulation.

ESMA published a report containing the final version of the guidelines in December 2023. The guidelines need to be updated at least annually to consider the latest market developments.

### **1.18 Benchmark Regulation Update**

On 19 March 2024, ECON published a [report](#) on the European Commission's legislative proposal for a Regulation amending the Benchmarks Regulation (EU) 2016/1011 ("BMR") as regards the scope of the rules for benchmarks, the use in the Union of benchmarks provided by an administrator located in a third country and certain reporting requirements. ECON [intends](#) for the new rules to apply to critical benchmarks, significant benchmarks, EU climate transition benchmarks ("EU CTBs"), EU Paris-aligned benchmarks ("EU PABs") and certain commodity benchmarks and that ESMA will have a supervisory role relating to critical benchmarks, significant benchmarks, cross-border benchmarks, third country benchmarks, EU CTBs and EU PABs. They also decided that the current threshold of a total average value of at least 50 billion euro to define a significant benchmark should be retained.

The European Parliament is expected to vote on it in the plenary session between 22 and 25 April 2024. ECON expects that triilogue negotiations between the Parliament and Council will start after the Parliamentary elections in June 2024.

### **1.19 IFR and IFD Update**

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

On 13 March 2024, the European Commission adopted a [Delegated Regulation](#) with RTS on the details of the scope and methods for prudential consolidation of an investment firm group under IFR.

The default position is that IFR, apart from provisions on liquidity, applies to investment firm groups on a consolidated basis. Article 7(5) of IFR empowers the Commission to adopt delegated acts specifying the details of the scope and methods for prudential consolidation of these groups.

The RTS contain provisions on the: scope of consolidation; methods of consolidation; methodology for the calculation of the own fund's requirements in a consolidated situation; and rules applicable for minority interest and additional Tier 1 and Tier 2 instruments issued by subsidiaries in the context of prudential consolidation. The Council of the EU and the European Parliament will now scrutinise it. If neither object, it will enter into force 20 days after its publication in the OJ.

## 1.20 Macprudential Developments

On 24 January 2024, the Commission issued a [report](#) on the macroprudential review for credit institutions, the systemic risks relating to non-bank financial intermediaries ("NBFIs") and their interconnectedness with credit institutions. The report notes that *"the same conventional and emerging risks affecting banks, coupled with the diversity and complexity of NBFIs sectors, may lead to specific vulnerabilities of NBFIs stemming from structural liquidity mismatches; the build-up of excessive leverage across NBFIs; and lack of consistency and coordination among macroprudential frameworks across the EU"*.

Therefore, the Commission will run a targeted consultation on macroprudential policies for NBFIs in 2024. They will also consult on the review of the Securities Financing Transaction Regulation ("SFTR").

## 1.21 DORA Update

On 13 March 2024, the European Commission adopted the following Delegated Regulations supplementing the Regulation on digital operational resilience for the financial sector (EU) 2022/2554 ("DORA"):

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

The Council of the EU and the European Parliament will now scrutinise them. If neither object, the Delegated Regulations will be published in the OJ and enter into force 20 days later.

For more information on DORA please see [DORA: Six Key Action Points for Firms](#)

## 1.22 CSDR Update

On 16 January 2024, the [Regulation](#) amending CSDR ("CSDR Refit") entered into force. It aims to reduce the financial and regulatory burden on central securities depositories ("CSDs") and improve their ability to operate across borders. Among other things, it will enable simpler passporting and improve supervision and settlement efficiency. Depending on the Articles, it will apply from either 1 May 2024 or two years after entering into force.

On 31 January 2024, ESMA published a [report](#) on the provision of cross-border services by CSDs and the handling of passport applications under Article 23 of CSDR from 2020 to 2022. ESMA concluded that:

- (a) There is overall stability in the landscape of EEA CSDs.
- (b) Compared to 2017 to 2020, fewer passport applications were processed.
- (c) Lack of harmonisation is seen as the most unfavourable factor for the development of cross-border services.
- (d) TARGET2-Securities (T2S) is one of the main drivers for the development of CSD cross-border services.

### 1.23 EU Securitisation Regulation

On 5 March 2024, the European Commission adopted a [Delegated Regulation](#) supplementing the Securitisation Regulation with regard to RTS specifying the content, methodologies and presentation of information related to the principal adverse impacts of the assets financed by the underlying exposures on sustainability factors. It applies to simple, transparent and standardised ("STS") non-ABCP traditional securitisation, and STS on-balance-sheet securitisation and aims to standardise the type and presentation of information an originator may opt to disclose.

Commission Delegated Regulation ([EU](#) 2024/584 amending RTS in Delegated Regulation (EU) 2019/1851 as regards the homogeneity of the underlying exposures in STS securitisations came into force on 7 March 2024. The RTS specify the conditions for assessing the homogeneity of the underlying exposures in a pool of an STS on-balance-sheet securitisation and make amendments to Articles 1 and 2 of Delegated Regulation (EU) 2019/1851 to extend its scope to these securitisations.

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. On 22 March 2024, Commission Delegated Regulation ([EU](#) 2024/920 supplementing the Securitisation Regulation with regard to RTS specifying the performance-related triggers and the criteria for the calibration of those triggers was published in the OJ and will come into force on 12 April 2024.

### 1.24 MiFID II /MiFIR Update

#### Ireland

On 8 March 2024, the Central Bank [welcomed](#) the ESMA [statement](#) issued on 13 February 2024 that until the forthcoming legislative amendment to Article 27(6) of the MiFID II Directive (EU) 2014/65/EU ("MiFID II") applies, ESMA expects NCAs not to prioritise supervisory actions towards investment firms on the periodic reporting obligation to publish RTS 28 reports (see further below). The Central Bank has confirmed that it will apply the measures outlined in this ESMA statement.

#### EU

On 8 January 2024, ESMA published an [updated opinion](#) on the assessment of pre-trade transparency waivers for equity and non-equity instruments under the Markets in Financial Instruments Regulation (EU) 600/2014 ("MiFIR"). The opinion summarises the considerations on

which ESMA opinions on pre-trade transparency waivers issued under Articles 4(4) and 9(2) of MiFIR are based.

On 8 January 2024, ESMA published an [updated version](#) of its manual on post-trade transparency under MiFID II and MiFIR.

On 11 January 2024, ESMA [launched](#) a common supervisory action ("CSA") with NCAs to assess the implementation of pre-trade controls ("PTCs") by investment firms using algorithmic trading techniques. The rules governing the use of PTCs are set out in MiFID II.

On 2 February 2024, ESMA updated its [Q&As](#) on data reporting under MiFIR.

On 13 February 2024, ESMA published a [public statement](#) on the deprioritisation of supervisory actions concerning the obligation to publish the best execution reports required under Commission Delegated Regulation (EU) 2017/576 ("RTS 28 reports").

ESMA expects NCAs not to prioritise supervisory actions towards investment firms concerning the periodic reporting obligation to publish the RTS 28 reports. This expectation applies from 13 February 2024 until the date the amending Directive is transposed in all member states.

## **MIFID II Amending Directive and MiFIR Amending Regulation**

Directive [\(EU\) 2024/790](#) amending MiFID II and Regulation [\(EU\) 2024/791](#) amending MiFIR as regards enhancing data transparency, removing obstacles to the emergence of consolidated tapes, optimising the trading obligations and prohibiting receiving payment for order flow came into force on 28 March 2024. They amend the MiFID II regime to improve access to market data and transparency.

The MiFIR Amending Regulation introduces an EU-wide consolidated tape that brings together market data provided by platforms on which financial instruments are traded in the EU. It also includes a prohibition on receiving payment for order flow, which seeks to phase out the practice whereby brokers receive payments for forwarding client orders to trading platforms. The MiFID Amending Directive makes consequential changes to ensure consistency with the amendments to MiFIR and member states have until 29 September 2025 to transpose it into national law.

On 21 March 2024, ESMA published a [communication](#) on the transition under the MiFIR Amending Regulation. ESMA acknowledges the need for guidance, particularly on the application of Article 54(3) of MiFIR, which foresees the continued application of the delegated acts in place beyond 28 March 2024 until these delegated acts have been revised. It is carrying out an assessment of the provisions that may benefit from further guidance.

On 27 March 2024, the European Commission published a [communication](#) on a draft interpretative notice on the transitional provision in the MiFIR Amending Regulation. It notes that, in some cases, the new provisions must be supplemented by new or amended Commission delegated regulations to become fully operational and cannot be supplemented adequately by existing regulations. The Commission clarifies that, in those cases, the existing delegated regulations will continue to apply together with the MiFIR provisions that they supplement, as applicable before 28 March 2024.

On 27 March 2024, ESMA also published a [public statement](#) on the transitional provision to complement the Commission's interpretative notice which provides further guidance on the new rules

that need to be supplemented by delegated regulations and those rules that are 'self-executing' and do not need to be supplemented by delegated regulations to be effective.

## 1.25 Investment Fund Statistics

### Ireland

The main points to note in the Central Bank's [Q4 2023 statistics](#) issued in February 2024 are as follows:

- (a) The NAVs of Irish-resident funds increased for the fifth successive quarter, by €228 billion to €4,083 billion, in Q4 2024, driven mainly by positive revaluations of €92 billion and transaction inflows of €39 billion.
- (b) Equity funds have shown the most significant NAV increase of €135 billion, followed by bond funds which increased by €42 billion. These increases continue ongoing trends, reflecting the popularity of passive, index tracking funds such as bond and equity ETFs, when compared to actively managed funds.
- (c) MMFs showed NAV increases of €49 billion driven primarily by investor inflows of €22bn and positive revaluations of €35 billion.

### Luxembourg

The main points to note in the CSSF's [February 2024](#) update for regulated Luxembourg funds are as follows:

- (a) Total net assets held by Luxembourg UCITS, Part II UCIs, SIFs and SICARs (regulated Luxembourg investment funds) amounted to €5,393.311 billion as at 29 February 2024.
- (b) The number of CSSF-regulated Luxembourg investment funds active in the markets totals 3,260.
- (c) Of the 3,260 active Luxembourg investment funds, 2,132 entities adopted an umbrella structure and together have a total of 12,795 sub-funds. The remaining 1,128 are structured as stand-alone funds.
- (d) As at February 2024, there were a total of 13,923 fund units.
- (e) During February 2024, there were more subscriptions than redemptions in both equity funds and fixed-income funds.
- (f) In addition, the number of Luxembourg RAIFs reached 2,578 as of 2 April 2024.

## 2 Listings

For more information on this topic please see our [GRS Market Update Q1 2024](#)

## 3 Tax

### 3.1 FATCA / CRS Investigations and Policies – Ireland

The Irish Revenue Commissioners ("Revenue") have an increased focus on FATCA and CRS enforcement. There has been several recent investigations and enquiries in this area. Irish funds have been the primary focus of this initiative. Revenue's actions are understood to follow on from Organisation of Economic Cooperation and Development ("OECD") peer reviews where Ireland was encouraged to take steps to secure continued compliance.

In practical terms, Revenue has been contacting financial institutions, such as Irish funds, regarding their CRS and FATCA returns and processes. Typically, Revenue raise questions and request related information from the fund. They will generally seek an interview with key officers of the fund and their advisors to discuss responses. Although FATCA and CRS obligations will typically be outsourced by the fund to a third party, the legal obligation for compliance rests with the fund and the attendance of the responsible individuals from the fund is likely to be required.

Typically, Revenue will request sight of the policies and procedures which the fund adopts on FATCA and CRS due diligence procedures. They may also seek documentary evidence to support oversight on compliance by the board of the fund. Penalties for non-compliance are being applied, entity classifications are being reviewed and overall governance arrangements for FATCA and CRS are being scrutinised currently.

Our recommendation is that funds periodically review their FATCA and CRS arrangements. This should allow any errors to be identified and rectified prior to Revenue interventions. To the extent that a written document on the fund's due diligence procedures and oversight does not exist, it would be recommended to adopt one. Generally, this will be a summary of the operational steps to which the fund is already adhering.

Maples Group can assist in any engagements with Irish Revenue, including attending at Revenue reviews and preparing manuals on FATCA and CRS compliance. For information concerning Maples Group's services in this area, please see the relevant pages on our relevant [AEOI services webpage](#) or contact your usual contact.

### **3.2 VAT Treatment of Negotiation Services – Ireland**

The VAT treatment of negotiation services has long been explicitly dealt with in EU VAT legislation but has never been put on a firm statutory footing in Ireland. It is, therefore, helpful that the Revenue Commissioners have now published guidance on the VAT treatment of negotiation services in respect of financial services ("Guidance"). The Guidance is of particular relevance to financial services clients receiving or offering distribution and arranger services in relation to shares and securities.

The EU VAT Sixth Directive explicitly includes reference to 'negotiation' with respect to the VAT exemption for financial services including for transactions in payments, credit, debt, securities and shares. The Irish legislation attempts to cover exempt negotiation services in respect of financial services through a specific paragraph in the Irish VAT legislation which exempts the supply of 'agency services' relating to various financial services. It has long been understood by practitioners that agency services are synonymous with negotiation services. Historically, there was no published Revenue guidance on the point and practitioners often looked to the HMRC guidance on exempt intermediary services for comfort.

The Guidance sets out certain conditions (taken from ECJ case law) which must be met for a service to be treated as negotiation or agency services. The Guidance makes it clear that it is not sufficient to label a service as an agency or negotiation service for that service to qualify for exemption from VAT. The Guidance also provides additional commentary on specific services, including negotiation in stocks, shares, debentures, and other securities, negotiation in payments, negotiation in debts and negotiating credit.

The Guidance is particularly helpful given the changes made in Finance Act (No.2) 2023 ("Finance Act"). Previously, the Irish VAT legislation exempted financial services that consisted of *"issuing, transferring or otherwise dealing in stocks, shares, debentures and other securities (other than documents establishing title to goods)"*. The Finance Act deleted reference to 'issuing' from that

section although paragraph 6(1)(b) continues to reference arranging for, or underwriting, an issue of stocks, shares, debentures and other securities. The Notes for Guidance to the Finance Act states that the reason for the deletion is because issuing shares is already outside the scope of VAT and that it was, therefore, incorrect to reference the issuing of shares as exempt.

Service providers and recipients of services from outside Ireland should continue to give careful consideration to the nature of services they are providing or receiving and whether the VAT treatment applied is consistent with the Guidance and conditions set out therein.

### **3.3 Investment Fund Audited Accounts and Global Minimum Tax Disclosures**

The EU Global Minimum Tax or Pillar 2 Directive (EU) 2022/2523 has been implemented across the EU including Ireland and Luxembourg with effect from 31 December 2023. It implements the OECD Global Anti-Base Erosion ("GloBE") or Pillar Two rules which aim to ensure that large businesses with €750 million plus of annual revenue pay an effective rate of tax of at least 15% in each jurisdiction where they operate by way of new 'top-up taxes'. The Pillar Two rules have also been implemented in many other countries outside the EU.

There are safe harbours from the new Pillar Two top up taxes for investment funds and their subsidiary entities provided they meet certain conditions. Maples Group has been involved in assessing large investment fund structures for their exposure to Pillar Two and the new top up taxes and the applicability of the investment fund safe harbours.

Certain investment funds reporting under IFRS or US GAAP must make disclosures regarding the expected impact of Pillar Two starting with their 2023 accounts.

Irish funds may report under IFRS or US GAAP, Luxembourg funds may report under IFRS, US GAAP or Luxembourg GAAP, and Cayman Islands funds may report under US GAAP.

For example, accounting standard IAS 12 under IFRS has been amended recently to introduce disclosure requirements from 1 January 2023 in respect of the expected impact of Pillar Two. There are further disclosure requirements for 2024 financial reporting periods, including the requirement to disclose the amount of current tax expense for any top-up tax. Equivalent rules have been implemented for [Luxembourg GAAP for financial year 2024](#).

Under US GAAP, SEC-registered funds may be required to evaluate whether Pillar Two presents a 'material uncertainty' that could significantly impact the company's future operations and overall financial position.

Maples Group can assist in the audit process by reviewing the investment fund structure and preparing a report for the directors and management of the fund and the audit firm about the Pillar Two position and the applicability of the investment fund safe harbours.

### **3.4 Luxembourg FAQ on Implementation of Global Minimum Tax Rules**

In March 2024 the Luxembourg Tax Authorities ("LTA") issued a [FAQ](#) on the law of 22 December 2023 (*Loi du 22 décembre 2023 relative à l'imposition minimale effective en vue de la transposition de la directive (UE) 2022/2523 du Conseil du 15 décembre 2022*) that implemented the Pillar 2 Directive.

Generally, the FAQ provides guidance focused on the recognition of deferred tax assets, deferred tax liabilities ("DTAs / DTLs"), incurred before Pillar 2 and makes reference to the [Q&A 24/032 of the](#)



[Accounting Standard Commission](#) in order to clarify aspects of the disclosure of the DTA and DTLs from an accounting perspective.

For example, the FAQ confirms that it is sufficient to disclose the pre-Pillar 2 DTAs / DTLs in the notes to the financial statements, preferably of the year preceding the transition year to the Pillar 2 rules.

Further guidance is expected from the LTA with the potential update of the current FAQ and legislative initiatives may be introduced to expand clarifications on Pillar 2.

We recommend preparing an impact assessment on the new rules as soon as possible, as certain investors or investments may trigger the application of these rules.

### **3.5 End of Temporary VAT Rate Reduction – Luxembourg**

The temporary VAT rate reduction applicable during 2023 has expired. The Luxembourg VAT authorities issued an [administrative circular](#) detailing the new VAT rates applicable from 1 January 2024 as follows:

- (a) Standard rate: 17%;
- (b) Intermediate rate: 14%; and
- (c) Reduced rate: 8%

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# About the Maples Group

Maples Group is a leading service provider offering clients a comprehensive range of legal services on the laws of the British Virgin Islands, the Cayman Islands, Ireland, Jersey and Luxembourg, and is an independent provider of fiduciary, fund services, regulatory and compliance, and entity formation and management services. Maples Group distinguishes itself with a client-focused approach, providing solutions tailored to their specific needs. Its global network of lawyers and industry professionals are strategically located in the Americas, Europe, Asia and the Middle East to ensure clients gain immediate access to expert advice and bespoke support, within convenient time zones.

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

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