



MAPLES
GROUP

Funds & Investment Management Update – Ireland and Luxembourg

Quarterly Update | July - September 2023

Table of Contents

1	Legal & Regulatory	3
1.1	UCITS and AIFMD Update	3
1.2	Central Bank Discussion Paper on Macroprudential Policy for Investment Funds	3
1.3	Sustainable Finance Update	4
1.4	Individual Accountability Framework	5
1.5	AML/CTF Developments	5
1.6	MiCA Consultations – Crypto Assets	6
1.7	EU-US Data Privacy Framework	7
1.8	ELTIF 2.0 Update	7
1.9	Modernising Luxembourg Fund Legislation in Force	7
1.10	EMIR Update	8
1.11	Benchmarks Regulation Update	8
1.12	IFR and IFD Update	9
1.13	MMF Regulation Functioning Report	9
1.14	CSSF Circular 22/839	9
1.15	Cross-Border Distribution of Funds - ESMA Report	9
1.16	ESMA Work Programme 2024	10
1.17	CSDR Update	10
1.18	EU Securitisation Regulation	10
1.19	MiFID II /MiFIR Update	11
1.20	ESRB: Risks in Corporate Debt and Real Estate Investment Funds and Recommendation on Leverage and Liquidity Report	12
1.21	Investment Fund Statistics	12
2	Tax	13
2.1	Ireland - Budget 2024	13
2.2	Luxembourg - Implementing Pillar Two Directive	13
	Contacts	14
	About the Maples Group	16

1 Legal & Regulatory

1.1 UCITS and AIFMD Update

EU

On 20 July 2023, the European Parliament, Council of the EU and the European Commission ("Commission") announced their [provisionally agreed position](#) on proposed amendments to the UCITS Directive and under the Alternative Investment Fund Managers Directive (EU) 2011/61 ("AIFMD"). The revised regime will harmonise the rules governing liquidity management tools, in line with international recommendations to support financial stability. It will also increase transparency on the so-called 'delegation rules', by ensuring that supervisors are informed about the extent to which fund managers rely on expertise from third parties. Further, the new rules will establish a harmonised framework for funds that originate loans especially to companies in the EU, offering new funding opportunities to the real economy while safeguarding investor protection.

On 27 September 2023, the European Parliament indicated it will consider both amending directives during its plenary session on 5 to 8 February 2024.

For more information on the AIFMD proposals, please see our update, [A Step Closer to AIFMD 2.0](#).

On 18 July 2023, the European Securities and Markets Authority ("ESMA") published its 2022 [annual report](#) on penalties and measures issued under the UCITS Directive (EC) 2009/65 and its 2022 [annual report](#) on penalties and measures issued under AIFMD. In the UCITS report, nine national competent authorities ("NCAs") imposed a total of 38 penalties. The total aggregated value of financial penalties imposed amounted to over €97 million. In the AIFMD report, 10 NCAs imposed a total of 128 penalties. The total aggregated value of financial penalties imposed amounted to over €2 million.

Luxembourg

On 1 August 2023, the Commission de Surveillance du Secteur Financier ("CSSF") issued a [press release](#) on the availability of [standardised model articles of incorporation](#) ("SMA") for new UCITS fund launches. The SMA aims to ease the drafting of the articles of incorporation and facilitate the CSSF's examination of each new UCITS application. The editable template, permits users to tailor the articles of incorporation, however, the CSSF recommends that amendments are limited to retain the benefit of standardisation. It is not a new regulatory requirement, nor will it guarantee CSSF approval of the new UCITS. The current approval process remains unchanged. The CSSF also issued a [user guide](#) on the SMA.

As a reminder, the CSSF released a [standardised model prospectus](#) in November 2022. For more information on the standardised model prospectus, see our [Funds & Investment Management Update Ireland and Luxembourg Q4 2022](#).

1.2 Central Bank Discussion Paper on Macroprudential Policy for Investment Funds

On 18 July 2023, the Central Bank of Ireland ("Central Bank") published [An approach to macroprudential policy for investment funds](#). It looks at key considerations for developing and operationalising a macroprudential framework for the funds sector given its growing importance for the functioning of the financial system and real economy. The paper also seeks views on a number of issues, including: the nature of the systemic risk in this context; the current regulatory framework for the funds sector; the objectives and principles of macroprudential policy; the design of

macroprudential tools; and considerations for operationalising the macroprudential framework for the funds sector. Comments are invited until 15 November 2023.

1.3 Sustainable Finance Update

On 6 July 2023, ESMA launched a [common supervisory action](#) ("CSA") with NCAs on sustainability-related disclosures and the integration of sustainability risks. This involves ESMA and NCAs (including the Central Bank and the CSSF) reviewing the asset management sector to assess sustainability-related disclosures and the integration of sustainability risks and specifically the risks stemming from incorrect and misleading disclosures on sustainability. The aim is to foster convergence in how the NCAs supervise sustainability related disclosures. ESMA also specifically references adherence to UCITS Directive and AIFMD which require UCITS management companies and AIFMs to factor the consideration of sustainability risks into their investment due diligence process, risk management process and conflicts of interest policy (across all the funds managed, not just article 8 and article 9 funds). On 6 September 2023, the CSSF issued a [press release](#) outlining the CSA process and indicated, on 29 August 2023, that it had contacted in-scope Luxembourg investment fund managers ("IFMs") by e-mail and technical information and deadlines would be communicated to these entities on a bilateral basis.

On 31 July 2023, the Commission adopted the [European Sustainability Reporting Standards](#) for use by all companies subject to the Corporate Sustainability Reporting Directive. The standards cover the full range of environmental, social, and governance issues, including climate change, biodiversity and human rights. They provide information for investors to understand the sustainability impact of the companies in which they invest. They also take account of discussions with the International Sustainability Standards Board and the Global Reporting Initiative to ensure a very high degree of interoperability between EU and global standards and to prevent unnecessary double reporting by companies.

The reporting requirements will be phased in over time for different companies.

On 13 September 2023, the Commission published a [draft Commission delegated directive](#) amending Directive (EU) 2013/34 as regards adjustments to the size criteria for micro, small, medium-sized and large companies to account for the effects of inflation. The adjustments mean that micro, small and medium-sized companies will not be subject to many of the EU financial and sustainability reporting provisions applicable to larger companies in Directive (EU) 2013/34 as amended by the Corporate Sustainability Reporting Directive and the Taxonomy Regulation.

On 14 September 2023, the Commission published two consultations (a [public consultation](#) and a [targeted consultation](#)) on the implementation of Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector ("SFDR"). Both aim to assess potential shortcomings in the SFDR framework. These relate to legal certainty, the useability of the legislation and its ability to stop greenwashing. The Commission wants to understand how SFDR has been implemented and what issues stakeholders have faced, including its interaction with other parts of the European sustainable finance framework. The targeted consultation includes sections specifically aimed at regulators, public bodies, financial market participants, investors and NGOs with an in-depth knowledge of SFDR.

Both close on 15 December 2023. The Commission intends to adopt a report on SFDR in Q2 2024.

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

On 28 September 2023, the Joint Committee of the three European Supervisory Authorities published their [second annual report](#) on the extent of voluntary disclosure of principal adverse impacts under the Article 18 of SFDR. It notes:

- (a) The results show an overall improvement compared to the previous year, although there is still significant variation in the extent of compliance with the requirements and in the quality of the disclosures both across financial market participants and jurisdictions.
- (b) Disclosures appear easier to find on websites compared to the previous year.
- (c) When financial market participants do not consider principal adverse impacts, they should better explain the reasons for not doing so.
- (d) While encouraged to do so under the SFDR, financial market participants are generally not disclosing to what extent their investments align with the Paris Agreement.
- (e) Voluntary disclosures of PAI consideration by financial products will be further analysed in future reports.

The report also includes recommendations for the Commission to consider ahead of the next comprehensive assessment of SFDR.

1.4 Individual Accountability Framework

The [Central Bank \(Individual Accountability Framework\) Act 2023](#) ("IAF Act") will significantly change the regulation and governance of regulated financial service providers in Ireland ("RFSPs") when fully implemented. It amends three pieces of core legislation and gives the Central Bank power to make regulations to strengthen and enhance individual accountability in the Irish financial services industry.

The IAF Act is in the process of being supplemented by regulations and regulatory guidance, some of which were consulted upon. The Central Bank's consultation 153 [CP153](#) - Enhanced governance, performance and accountability in financial services Regulation and Guidance under the Central Bank (Individual Accountability Framework) Act 2023 closed on 13 June 2023. For further information, please see our update, [CP153: CBI Consults on Individual Accountability Framework as Act Becomes Law](#). Its consultation [CP154](#) - Consolidated Guidelines on the Central Bank's Administrative Sanctions Procedure closed on 14 September 2023.

The IAF Act comprises the following core elements:

- The introduction (initially on a limited-scope basis) of a new Senior Executive Accountability Regime ("SEAR") which will apply from 1 July 2024;
- The introduction (for all Irish RFSPs) of new "Common Conduct Standards" and "Additional Conduct Standards", applicable to certain individuals in RFSPs, and new "Business Standards" applicable to the firms themselves;
- Enhancements to the Central Bank's fitness and probity regime; and
- Changes to the Central Bank's investigation and enforcement process and the administrative sanctions procedure.

1.5 AML / CTF Developments

Luxembourg

On 17 August 2023, the CSSF published a new [FAQ](#) on virtual asset service providers ("VASPs"). It concerns entities already registered or contemplating registration as a VASP, as defined in the [law of 12 November 2004](#) on the fight against money laundering ("ML") and terrorist financing ("TF"), as amended, as well as entities offering virtual asset services in Luxembourg. The FAQ takes into consideration the current legal AML / CFT framework applicable to VASPs, however the European virtual asset framework, i.e. the [Markets in Crypto Assets Regulation \(EU\) 2023/1114](#) ("MiCA") was not considered.

On 27 September 2023, the Financial Action Task Force ("FATF") [published](#) the mutual evaluation report of Luxembourg following its inspection of its AML regime. FATF recognises the quality of Luxembourg's existing AML / CFT framework and placed Luxembourg under regular monitoring, which is the best result possible following a mutual evaluation.

FATF made a number of findings, including a positive assessment of the CSSF's AML / CFT supervisory role. FATF has made a number of recommendations for Luxembourg to implement, including around CFT and targeted financial sanctions. It also notes that the CSSF's public statements on enforcement action contain limited information on the breaches which would assist other financial institutions in understanding what would constitute significant deficiencies.

EU and International

On 13 July 2023, the European Banking Authority ("EBA") published its [fourth opinion](#) on the risks of ML and TF affecting the EU's financial sector. In particular, the TF risks identified in its final 2021 report continue to exist, though the changed geopolitical situation and an increase in right-wing extremism have given rise to new TF risks. With few exceptions, awareness of ML / TF risks is increasing across all sectors under the EBA's AML / CFT remit, but the AML / CFT systems and controls institutions have put in place are not always effective. New risks have also arisen from the laundering of proceeds from environmental crimes and cybercrimes. The EBA therefore issued 23 proposals to the EU co-legislators and AML / CFT competent authorities to address the risks.

On 10 August 2023, the EBA published its [third report](#) on the functioning of AML and CFT colleges in 2022 under the Fourth Money Laundering Directive (EU) 2018/843 ("MLD4"). The EBA explains that in 2022, its annual thematic review of AML and CFT colleges focused on the asset management sector. AML / CFT colleges are permanent structures that bring together different supervisory authorities responsible for the AML / CFT supervision of a cross-border financial institution, which operates in at least three member states. Overall, it found that competent authorities had taken important steps to improve the functioning of the colleges and prudential supervisors and financial intelligence units participated in a larger number of colleges, which ensured that supervisors had access to more relevant information to help inform their supervision of cross-border institutions. However, in some colleges the sharing of information remained insufficient.

On 7 September 2023, the Commission published [guidance](#) to help European operators assess the possible risks of Russian and Belarusian sanctions circumvention – and how to avoid it. It outlines what EU operators need to do when conducting due diligence in their work as required by EU law.

On 28 September 2023, the [Delegated Regulation](#) amending the list of high-risk third countries with strategic AML and CFT deficiencies produced under Article 9(2) of MLD4 was published in the Official Journal of the EU. It adds Cameroon and Vietnam to the list of third countries and will apply from 18 October 2023.

1.6 MiCA Consultations – Crypto Assets

Ireland

The Irish government's [consultation](#) on the exercise of national discretions in the MiCA closed on 15 September 2023. MiCA is the first European-level legislation introducing a harmonised and comprehensive framework for crypto-assets, covering issues from the offering to the public of crypto-assets to preventing market abuse in crypto-asset markets. One issue the government consulted on is how Irish law should address transitional arrangements for existing VASPs already providing services under Ireland's domestic regulatory framework.

EU

On 20 September 2023, ESMA's [first consultation](#) on Level 2 implementation measures under MiCA closed. The aim was to canvas views on, for example, the:

- content, forms and templates for notification by certain financial entities.

- content, forms and templates for the application for authorisation of Crypto Assets Service Providers ("CASPs").
- complaints handling procedure.
- identification, prevention, management and disclosure of conflicts of interest by CASPs.
- assessment of intended acquisition of qualifying holdings requirements.

ESMA expects to submit its draft technical standards to the Commission for endorsement by 30 June 2024. It also intends to consult further on MiCA measures in October 2023 and Q1 2024.

1.7 EU-US Data Privacy Framework

The EU-US Data Privacy Framework ("DPF") became effective on 10 July 2023. If transferring personal data to entities that have self-certified under the DPF, EU data controllers can now rely on such entity's DPF certification, i.e. they do not have to put standard contractual clauses ("SCCs") or any other data transfer tool in place with the US recipient. For example, a fund could use the DPF if disclosing personal data of investors / directors to a service provider in the US who is DPF-certified.

Currently, organisations subject to the jurisdiction of either the US Federal Trade Commission or the US Department of Transportation are eligible to self-certify that they are compliant with DPF principles, which track the core GDPR principles. All DPF-certified companies can be found on the [Data Privacy Framework List](#). This list must be checked before relying on the EU-US adequacy decision as a mechanism for transferring personal data outside the EEA.

EU data controllers can still rely on the SCCs and other data transfer mechanisms they may already have in place. If doing so, updating their data transfer impact assessments to reference the additional safeguards and redress mechanisms brought in by the DPF should be considered. These apply regardless of whether an entity is DPF-certified.

1.8 ELTIF 2.0 Update

In August 2023, Irish Funds (the representative body for the Irish funds industry) announced that the Central Bank had outlined its roadmap for the implementation of the enhanced regulatory framework for European Long Term Investment Funds ("ELTIF 2.0"). In particular:

- The Central Bank has developed a standalone ELTIF chapter (not yet published) for inclusion in its AIF Rulebook. It is proposed that the ELTIF will be a standalone product and therefore, it will not require separate authorisation as a RIAIF or a QIAIF. The authorisation process for ELTIFs will however broadly follow the existing authorisation processes for RIAIFs and QIAIFs.
- The Central Bank intends to consult on these amendments to the AIF Rulebook later this year.
- It is expected that most of the amendments to the AIF Rulebook will relate to supervisory and operational matters that currently apply to Irish regulated AIFs, such as expected disclosures and regulatory reporting, rather than product-specific rules (which are already in the ELTIF 2.0 framework).

The Central Bank intends to publish the revised AIF Rulebook shortly.

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

1.9 Modernising Luxembourg Fund Legislation in Force

On 28 July 2023, the [law of 21 July 2023](#) which amends core fund legislation in Luxembourg, entered into force. It modernises and improves the various Luxembourg structuring options for investment funds and managers, including the possibility to establish Part II SICAVs as a partnership limited by shares (SCA, *société en commandite par actions*), a common limited partnership (SCS, *société en commandite simple*) or a special limited partnership (SCSp, *société en commandite spéciale*) in addition to the previously permitted public limited (SA, *société anonyme*). This is a welcome improvement, particularly considering the prominent role Part II funds, which are Luxembourg retail funds, play with respect to retail ELTIFs.

For more information on the key enhancements see [Funds and Investment Management Update Ireland and Luxembourg Q1 2023](#).

1.10 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 6 July 2023, the EBA published a [final report](#) on regulatory technical standards ("RTS") on initial margin model validation ("IMMV") under EMIR. It has also published an [opinion](#) on regulatory scope and validation of initial margin ("IM") models.

The final draft RTS establish the supervisory procedures for the validation of IM models applied for the exchange of IM. They also envisage a proportionate application of supervisory procedures, which entails a standard supervisory procedure to ensure an in-depth validation of the largest banking counterparties and a simplified approach for smaller counterparties.

In its opinion, the EBA calls on the co-legislators and the Commission to consider establishing a centralised validation function at the EBA to ease the co-ordination issues linked to the validation of IM models that have industry-wide application. It also suggests that the scope of entities subject to the RTS should be reconsidered so that they apply only to the most significant counterparties.

On 19 July 2023, ESMA published a [final report](#) on amendments to the RTS in Commission Delegated Regulation (EU) 153/2013, which include requirements for CCPs that aim to limit the procyclicality of margin requirements under EMIR. ESMA has submitted its final report to the Commission for endorsement.

On 14 August 2023, the European Commission's July 2023 [consultation](#) on a draft Implementing Decision on equivalence of financial markets in Australia under EMIR closed.

On 7 September 2023, a number of European and international trade associations (including the European Fund and Asset Management Association) which represent major European end users of derivatives along with providers of clearing services, published a [joint statement](#) recommending deletion of the proposed active account requirement or AAR under the Commission's proposal amending EMIR intended to mitigate excessive exposures to third-country CCPs and improve the efficiency of EU clearing markets (EMIR 3). Reasons cited include: the proposed AAR would negatively impact EU capital markets by introducing fragmentation and loss of netting benefits, and make the EU less resilient to market stresses, with no benefit to EU financial stability; and would severely challenge the principle of best execution toward the end client.

1.11 Benchmarks Regulation Update

On 14 July 2023, the Commission adopted a [delegated regulation](#) extending the transitional period for third-country benchmarks under Article 51(5) of the Benchmarks Regulation (EU) 2016/1011 ("BMR").

Under the BMR, as of 1 January 2024, EU supervised entities can only use non-EU benchmarks in three cases. These are if ESMA has recognised their administrator; if a benchmark has been endorsed by an EU supervised entity that assumes regulatory responsibility; or if the Commission has established that the third-country regime in which the administrator operates is equivalent to the BMR. Information received from ESMA shows that there are currently 262 administrators from third countries that are not yet registered in the EU, providing a total of around 3.6 million benchmarks.

The Commission has adopted a report on the scope of the BMR on the continued use by supervised entities of third-country benchmarks and on potential shortcomings of the current framework. To ensure continued access by market participants in the EU to most of the world's benchmarks, the Commission will extend the transitional period by a further two years. Therefore, the delegated

regulation extends the transition period to 31 December 2025 for third-country benchmarks used by supervised entities.

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

1.12 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 25 July 2023, the EBA published a [consultation paper](#) on draft guidelines on the application of the group capital test ("GCT") for investment firm groups under the IFR. They set qualitative and quantitative criteria that competent authorities should consider when assessing whether the conditions for obtaining the GCT derogation are met. The deadline for responses is 25 October 2023.

On 12 September 2023, Commission Delegated Regulation ([EU 2023/1651](#)) supplementing the IFD with regard to RTS on specific liquidity measurement came into force. The RTS specify how the liquidity risk and elements of liquidity risk in Article 42(2) of the IFD should be measured.

On 20 September 2023, Commission Delegated Regulation (EU) 2023/1668 supplementing the IFD with regard to RTS on Pillar 2 add-ons for investment firms came into force. NCAs have the power, under Article 40 of the IFD, to impose additional Pillar 2 capital requirements on investment firms. These address risks that investment firms face or pose to others that are not covered or not sufficiently covered by the own funds' requirements in part three or four of the IFR.

The RTS clarify how NCAs should measure these risks and contain provisions on:

- Risks of disorderly wind-down.
- Risks not covered or not fully covered by K-factor requirements.
- Risks not covered or not fully covered by own funds requirements.

1.13 MMF Regulation Functioning Report

On 20 July 2023, the Commission published a [report](#) on the adequacy of the Regulation on money market funds ("MMFs") (EU) 2017/1131 ("MMF Regulation") from a prudential and economic point of view. It concludes that the safeguards in the MMF Regulation have worked as intended and have enabled the MMF Regulation to cope with the liquidity stress experienced by MMFs during the COVID-related market turmoil, recent interest rate increases and related financial asset re-pricing.

The report does however identify vulnerabilities that it considers should be assessed further. It does not propose that the Regulation be revised presently.

1.14 CSSF Circular 22/839

On 26 July 2023, the CSSF published CSSF [Circular 22/839](#) which amended CSSF [Circular 21/789](#) by extending sections 4.1 and 4.2 on the statutory audit of IFMs and the management letter respectively of the latter circular to management companies subject to article 125-1 of Chapter 16 of the [law of 17 December 2010](#) relating to undertakings for collective investment and repealing CSSF [Circular 18/698](#) and CSSF [Circular 19/708](#) on the procedures for transmitting the management letter.

For more information on CSSF Circular 121/789 see [Funds & Investment Management Update Ireland and Luxembourg Q4 2021](#).

1.15 Cross-Border Distribution of Funds - ESMA Report

On 3 July 2023, ESMA published its second [report](#) on marketing requirements and marketing communications under the Regulation on the cross-border distribution of collective investment undertakings (EU) 2019/1156.

ESMA's key findings include the following:

- A greater level of harmonisation has been reached in areas where national divergences existed, especially when compared to a previous 2021 report by ESMA.

- Information provided by NCAs shows that many include the review of marketing communications in their supervisory processes.
- The level of convergence on prior authorisation rules for the marketing of an AIF to retail investors or for AIFs managed by non-EU managers has increased.
- Some member states introduced new requirements for the key information document to comply with the language requirements in the PRIIPs Regulation

ESMA has submitted the report to the European Parliament, the Council of the EU and the Commission. It will publish the next report in two years.

1.16 ESMA Work Programme 2024

On 28 September 2023, ESMA published its [work programme](#) for 2024. In 2024, ESMA will develop rules for sustainable finance as part of the new European Green Bond Regulation and will deliver its final report on greenwashing, proposing actions to combat this practice. ESMA will also conclude the work on technical standards and guidelines on MiCA and the Digital Operational Resilience Act ("DORA").

Further ESMA will work to enhance financial stability and investor protection also through tasks mandated in the asset management area under the recently concluded reviews of AIFMD, the UCITS Directives, and CSDR. The ongoing reviews of EMIR may also lead to new mandates for ESMA in 2024.

1.17 CSDR Update

Ireland

The [European Union \(Dematerialised Securities\) Regulations 2023](#) (issued in July 2023) amend the Companies Act 2014 and provide for the dematerialisation of applicable securities in line with the requirements of the Central Securities Depositories Regulation (EU) 909/2014 ("CSDR"). CSDR applies to central securities depositories ("CSDs") that are based in the EU and their participants. CSDR requires that all newly issued securities of quoted companies admitted to trading in the EU hold all shares through a CSD from 1 January 2023 and all existing transferrable securities of quoted companies admitted to trading in the EU must be represented in book entry from 1 January 2025. Therefore, by 2023, all newly issued securities will have to be in a dematerialised format, while by the start of 2025, all traded securities will need to be held electronically.

EU

On 31 August 2023, Commission Delegated Regulation ([EU](#)) 2023/1626 which amends the RTS in Commission Delegated Regulation (EU) 2018/1229 for settlement fails relating to cleared transactions submitted by CCPs for settlement came into force. It will apply from 2 September 2024. Article 19 of Delegated Regulation (EU) 2018/1229 as it applied on 1 September 2024 will continue to apply to settlement fails that occurred before 2 September 2024. Article 19 provides for a specific collection and distribution process for cash penalties to be carried out by CCPs. It aims to ensure that for settlement fails relating to cleared transactions, where CCPs interpose themselves between counterparties, cash penalties are not applied to CCPs.

On 21 September 2023, the European Council published the [final compromise text](#) of the CSDR Refit on improving securities settlement and on central securities depositories.

1.18 EU Securitisation Regulation

On 7 July 2023, the Commission adopted a [delegated regulation](#) supplementing the EU Securitisation Regulation ([EU](#)) 2017/2402 with regard to RTS specifying in greater detail the risk retention requirements for originators, sponsors, original lenders and servicers. The RTS, in particular, cover:

- The methods of retaining risk.
- Measuring the level of retention.
- The prohibition on hedging or selling the retained interest.
- The conditions for retention on a consolidated basis.

- The conditions for exempting transactions based on a clear, transparent and accessible index.
- The methods of retaining risk in traditional securitisations of non-performing exposures.
- The impact of fees paid to the retainer on the effective material net economic interest.

When the RTS enter into force they will replace Commission Delegated Regulation (EU) 625/2014.

On 13 July 2023, ESMA published an updated [Q&As](#) on the EU Securitisation Regulation. As well as modifying some existing questions, it addresses new questions on: (a) amended transaction documents; (b) self-securitisation; (c) consumers' rights to access information; (d) annex 3: underlying exposures – commercial real estate; (e) annex 4: underlying exposures – corporate; (f) annex 8: underlying exposures – leasing; (g) annex 9: underlying exposures – esoteric; (h) and annexes 12 and 13: investor reports.

On 21 September, 2023 ESMA published a [study](#) on the EU securitisation market. It is limited to public securitisation deals issued after 1 January 2019. Overall, the size of the European securitisation market has decreased significantly since the €2 trillion it reached in 2010.

1.19 MiFID II / MiFIR Update

On 6 July 2023, ESMA published the [results](#) of the 2022 CSA and mystery shopping exercise on requirements for information on costs and charges under the MiFID II Directive (EU) 2014/65/EU ("MiFID II"). Although it showed adequate compliance with most requirements, there were certain shortcomings. These included: costs were not always shown as a percentage; a variation in allocation of costs between service and product costs; differing practices and sometimes lack of disclosure of inducements; and implicit costs were not always shown.

On 7 July 2023, ESMA published a [report](#) on sanctions and measures imposed under MiFID II in 2022. It indicates that NCAs' activity on imposing sanctions and measures has decreased compared to 2021, although the number of member states where sanctions and measures were applied and the total amount of imposed administrative fines have increased.

On 10 July 2023, ESMA published a [manual](#) on post-trade transparency under MiFID II and the Markets in Financial Instruments Regulation (EU) 600/2014 ("MiFIR") which consolidates all EU legal references that constitute the post-trade transparency regime.

On 11 July 2023, ESMA published its [final report](#), which includes draft RTS, following a review under MiFID II on the provision of investment services across the EU. It proposes to add new information requirements to the list of details investment firms have to provide at the passporting stage. In addition, a new investment services and activities passport notification will give NCAs further information on a firm's planned, or existing, cross-border activities. The draft standards have been submitted to the Commission for adoption.

On 11 July 2023, ESMA published a [supervisory briefing](#) with supervisory expectations on understanding the definition of advice under MiFID II. It clarifies the 2010 Q&A, Understanding the definition of advice under MiFID issued by CESR (ESMA's predecessor). It examines:

- The provision of personal recommendations and whether other forms of presenting information such as investment research, filtering, general recommendations, generic advice, presenting multiple products or access to model investment portfolios, could constitute investment advice.
- The presentation of a recommendation as suitable for a client or based on the client's circumstances. This includes making recommendations to become a client of a particular firm, making recommendations which are unsuitable in the light of knowledge about the client,

definitions of a "person's circumstances" and when recommendations will be viewed as based on a view of a person's circumstances.

- Perimeter issues around the definition of personal recommendation, including disclaimers to the client and failing to use known client information in an attempt to try avoiding the qualification as investment advice.
- Issues around the form of communication, including whether the internet or apps are always a 'distribution channel', use of social media posts, messages to multiple clients, distinguishing corporate finance and investment advice and whether these are mutually exclusive.

On 12 July 2023, ESMA published a [statement](#) highlighting retail protection concerns arising from securities lending and other securities financing transactions in relation to retail client financial instruments. It draws firms' attention to the strict MiFID II rules on securities lending on client consent, provision of collateral and information disclosure, as well as the requirement under Article 24(1) of MiFID II for firms to act honestly, fairly and professionally in accordance with their clients' best interests.

On 3 August 2023, ESMA published the [official translations](#) of the guidelines on product governance requirements under MiFID II. The guidelines apply from 3 October 2023. The final MiFID Remuneration Guidelines and the guidelines on certain aspects of MiFID II Suitability Requirements published on ESMA's website on 3 April 2023 will also apply from 3 October 2023. Under the MiFID Suitability Guidelines firms will, amongst other things, need to ask clients about their sustainability preferences as part of the suitability assessment and ensure that investment advice and investment decisions match those preferences.

1.20 ESRB: Risks in Corporate Debt and Real Estate Investment Funds and Recommendation on Leverage and Liquidity Report

On 4 July 2023, the European Systemic Risk Board ("ESRB") published a [compliance report](#) on its recommendation of 7 December 2017 relating to liquidity and leverage risks in investment funds. The recommendation is addressed to the Commission and ESMA and aims to address systemic risks related to liquidity mismatches and the use of leverage in investment funds. Overall, the ESRB observed a significant level of compliance with the recommendation while carrying out its assessment.

On 4 September 2023, the ESRB published an [issues note](#) explaining how the EU regulatory framework for investment funds could enhance the prevention and mitigation of systemic risks. It focuses on funds with large exposures to corporate debt and real estate. The ESRB concludes that:

- Structural vulnerabilities in investment funds that invest in assets, which are either inherently illiquid or might become illiquid in times of stress, are not fully addressed in the current regulatory framework.
- As a first line of defence, certain policy tools already present in the regulatory framework could be enhanced to better serve financial stability purposes.
- There is merit in exploring other ways to enhance the policy toolkit for funds from a financial stability perspective.

1.21 Investment Fund Statistics

Ireland

The main points to note in the Central Bank's Q2 2023 statistics issued in August 2023 are as follows:

- The net asset values ("NAVs") of Irish-resident funds continued to increase, by €79 billion reaching €3,820 billion, in Q2 2023, driven mainly by positive revaluations of €66 billion, with net inflows of €10 billion.
- Equity and bond funds showed the most significant NAV increases of €76bn and €18bn respectively. Valuation gains for these two fund types accounted for almost 90% of the overall increase in NAVs.

- MMFs showed NAV decreases of €6bn driven primarily by investor outflows of €13bn, partly offset by positive exchange rate revaluations.

Luxembourg

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

- Total net assets held by Luxembourg UCITS, Part II UCIs, SIFs and SICARs (regulated Luxembourg investment funds) amounted to €5,195.645 billion as at 31 August 2023.
- The number of CSSF-regulated Luxembourg investment funds active in the markets totals 3,323.
- Of the 3,323 active Luxembourg investment funds, 2,176 entities adopted an umbrella structure and together have a total of 13,024 sub-funds. The remaining 1,147 are structured as stand-alone funds.
- As at August 2023, there were a total of 14,171 fund units.
- During August 2023, there were more redemptions than subscriptions in equity funds while there were more subscriptions than redemptions in fixed-income funds.

In addition, the number of Luxembourg RAIFs reached 2,382 as of 30 September 2023.

2 Tax

2.1 Ireland - Budget 2024

On 10 October 2023, the Irish Minister for Finance presented Budget 2024. The Minister confirmed that Ireland will implement the OECD Pillar Two inspired "global minimum tax" under the EU Global Minimum Tax Directive or Pillar Two Directive ([EU\) 2022/2523](#) which provides that groups with annual revenue over €750m have a minimum effective tax rate of at least 15% in every jurisdiction where they operate.

The Minister also noted that the Irish Department of Finance is currently engaged in a detailed review of the taxation treatment of Irish funds. The final recommendations of this review are expected in mid-2024. The Maples Group has been closely involved and made its own submission to the Department of Finance and participated in several industry submissions.

For more information please see our client update [Irish Budget 2024 – Implications for International and Irish Business](#)

2.2 Luxembourg - Implementing Pillar Two Directive

On 4 August 2023, Luxembourg published a [draft law](#) ("Draft Law") to implement the Pillar Two Directive in Luxembourg which introduces a jurisdictional minimum tax of at least 15%. The rules would apply to multinational groups or large-scale domestic groups with a presence in Luxembourg through a 'constituent entity' provided that the group has an annual revenue of €750 million or more in at least two of the four fiscal years preceding the tested fiscal year, as per the consolidated financial statements of the group parent entity.

The Draft Law also introduces three new taxes in Luxembourg, an Income Inclusion Rule tax ("IIR" or "*impôt relatif à la règle d'inclusion du revenue*"), an Undertaxed Profits Rule tax ("UTPR" or "*impôt relatif à la règle des bénéficiaires insuffisamment imposés*") and a Qualified Domestic Minimum Top-up Tax ("QDMTT", or "*impôt national complémentaire*"). The IIR and the QDMTT are set to apply to fiscal years starting on or after 31 December 2023, whereas the UTPR will apply to fiscal years starting on or after 31 December 2024. The Draft Law should be adopted at the end of 2023.

While sector-specific exclusions have been foreseen for investments funds and other financial services, the scope and applicability of such exclusions should still be carefully monitored. In addition, certain investment structures may nevertheless suffer additional tax.

Even though the Draft Law may still be amended, groups and fund managers should assess whether their investment structure could fall within the scope of the rules.

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About the Maples Group

The 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. The 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.

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

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