Funds Quarterly Legal and Regulatory Update

1 October 2024 - 31 December 2024

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Contents

1 APPROACHING DEADLINES

Q1 2025	1 January 2025	The Corporate Sustainability Reporting Directive (**CSRD)** and related European Sustainability Reporting Standards (**ESRS**) begin to apply for Irish fund management companies which constitute large companies. The first sustainability statement of these companies, based on the ESRS templates, must then be published in 2026. Such in-scope fund management companies will also be required to comply with Article 8 of the Taxonomy Regulation.
	17 January 2025	Application date of the obligations imposed on fund management companies under the Digital Operational Resilience Act (**DORA**).
	17 January 2025	Deadline for submitting a response to the Department of Finance's consultation on the transposition of AIFMD II[1] into Irish law.
	27 January 2025	Deadline for responding to ESMA's consultation on the conditions to be applied to the active account requirement which will be introduced under EMIR 3.0.
	31 January 2025	Deadline for all fund management companies which provide MiFID II services (including individual portfolio management and investment advice) to retail investors to comply with the Dear CEO Letter issued by the Central Bank of Ireland (**Central Bank**) on 10 October 2024.
	31 January 2025	Deadline for all Irish UCITS management companies and AIFMs to file annual confirmation of ownership with the Central Bank.
	2 February 2025	Obligation under Article 4 of the EU AI Act[2] on providers and deployers of AI systems to ensure a sufficient level of AI literacy of their staff and other persons dealing with the operation and use of AI systems takes effect.
	11 February 2025	Deadline for responding to IOSCO's consultation on its revised recommendations for liquidity risk management for collective investment schemes and its related consultation on guidance for open-ended funds for effective implementation of the recommendations for liquidity risk management.
	20 February 2025	All UCITS which continue to prepare a UCITS KIID must file updated KIIDS which contain updated performance data for the period ended 31 December 2024 and which incorporate any other required revisions with the Central Bank no later than 20 February 2025.
	28 February 2025	Irish fund management companies who have been included by the Central Bank in its data collection exercise on costs and charges must submit their completed questionnaire by this date.
	28 February 2025	Deadline for filing the annual F&P PCF confirmation and CF certifications for both Irish authorised UCITS management companies/AIFMs and Irish authorised investment funds with the Central Bank under its Fitness & Probity regime.

[1] Directive (EU) 2024/927
[2] Regulation (EU) 2024/1689

	28 February 2025	Deadline for responding to the FSB's consultation on proposed policy recommendations to address leverage in non-bank financial intermediation.
	12 March 2025	Deadline for responding to the ESMA consultation on regulatory technical standards applicable to open-ended loan originating AIFs.
	Quarter 2 2025	ESMA is due to provide its technical advices to the European Commission on its proposed reform of the UCITS Eligible Assets Directive[3].
Q2 2025	4 April 2025	Deadline for Irish fund management companies to submit their completed "Registers of Information" on all contractual arrangements with ICT third party service providers under DORA to the Central Bank.
	16 April 2025	ESMA is due to deliver (i) its proposed regulatory technical standards on the characteristics of liquidity management tools (**LMT**) and (ii) its proposed guidelines on the selection and calibration of LMTs under AIFMD II to the European Commission.
	21 May 2025	The ESMA fund naming guidelines begin to apply to all in-scope funds established before 21 November 2024.
	30 May 2025	Deadline for filing the fund profile return for all Irish authorised sub-funds with the Central Bank.
	30 June 2025	Deadline for fund management companies managing Irish UCITS ETF to ensure compliance with the supervisory expectations set down by the Central Bank in its Dear Chair Letter published in November 2024.
	30 June 2025	Fund management companies which (i) are obliged due to their size; or (ii) which have chosen to report on the principal adverse impacts of investment decisions on sustainability factors under Article 4 of the SFDR must publish a full PAI statement (which for the first time must include historical comparisons against last year's PAI report) on their website on or before this date.
	H2 2025	The European Commission is expected to publish its proposal to reform the SFDR regime in the second half of 2025.
H2 2025		

[3] Directive 2007/16/EC

2 UCITS & AIFMD

2.1 ESMA publishes new Q&A on UCITS and AIFMD

On 3 October 2024, ESMA published a revised Q&A on performance fees charged to UCITS (**ESMA UCITS Q&A**). On the same date, it published a revised Q&A on performance fees charged to AIFs marketed to retail investors (**ESMA AIFMD Q&A**).

Both Q&A are revised editions of Q&As originally published by ESMA in July 2021 with the sole change being to the question asked by ESMA. The revised question in each case now clarifies that the date of creation of a new UCITS/AIF share class for the purposes of the Q&A is the date on which the share class is launched or seeded.

Both Q&A then confirm that performance fees must be crystallised after at least 12 months from the date of launch or seeding of the relevant share class.

A copy of the ESMA UCITS Q&A is available here.

A copy of the ESMA AIFMD Q&A is available here.

Key Action Points	In-scope fund management companies should review existing performance fee calculation methodologies for all Irish UCITS funds and any Irish RIAIF funds to ensure that the crystallisation methodology aligns with ESMA's expectations outlined in the ESMA UCITS Q&A and ESMA AIFMD Q&A.

2.2 ESMA publishes consultation on open-ended loan-originating AIFs

Under AIFMD II which introduces a new pan-EU loan origination framework which will be available from April 2026, a loan-originating AIF[4] must be established as a closed-ended fund unless the AIFM can satisfy its home regulator that its liquidity management approach is aligned with the investment strategy and redemption policy of the relevant fund.

On 12 December 2024, ESMA published a consultation setting out draft regulatory technical standards specifying the conditions that it proposes must be satisfied by an open-ended loan-originating AIF (**Consultation**). These conditions have been divided into four categories, namely (i) the establishment of an appropriate redemption policy, (ii) maintaining an appropriate amount of liquid assets, (iii) the type and frequency of liquidity stress testing to be carried out and (iv) the monitoring of the liquidity management system.

Responses to the Consultation must be submitted to ESMA by 12 March 2025.

A copy of the Consultation is available here.

A detailed overview of the Consultation is available in the Dillon Eustace briefing on the topic which is available here.

Key Action Points	Interested fund management companies should respond to the consultation by 12 March 2025 via the ESMA portal.

[4] Defined as an AIF whose investment strategy is mainly to originate loans or whose originated loans have a notional value that represents at least 50% of its NAV)

2.3 Department of Finance publishes consultation on implementation of AIFMD II

On 22 November 2024, the Irish Department of Finance published a public consultation on the exercise of national discretions in AIFMD II (**Consultation).**

It has sought feedback on the exercise of a number of different national discretions, including:

- whether the list of ancillary activities and services that may be provided by an external AIFM or UCITS management company should be extended to include the administration of benchmarks and the same functions and activities already provided by an AIFM or UCITS management company in relation to funds that it manages may be performed for the benefit of third parties, in the case of AIFMs, the provision of credit servicing activities and in the case of UCITS management companies, the receipt and transmission of orders; and

- whether AIFs that originate loans should be prohibited from granting loans to consumers in Ireland.

Responses to the Consultation can be made via the Department of Finance's consultation portal which is available here on or before 17 January 2025.

A copy of the Consultation is available here**.**

Key Action Points	Interested fund management companies should respond to the consultation by 17 January 2025.

2.4 ESMA announces collection of data on costs charged to investors in UCITS and AIFs

On 14 November 2024, ESMA launched a data collection exercise with the EU national competent authorities (**NCAs**) to assess the costs linked to investments in UCITS and AIFs and to better understand pricing practices currently employed by those managing and distributing such funds.

This exercise involves the collection of data from fund manufacturers on the different costs charged for the management of investment funds as well as collecting data from distributors (such as investment firms, independent financial advisors, neo-brokers) on fees paid directly by investors to distributors.

Those Irish fund management companies selected to participate in the exercise must complete a detailed questionnaire on costs charged to investors by 28 February 2025.

A report based on data received by ESMA via the NCAs will be submitted to the European Parliament (**Parliament**), the Council of the EU (**Council)** and the European Commission in October 2025 and will also input into an enhanced 2025 ESMA market report on costs and performance of EU retail investment products.

A copy of the ESMA press release is available here.

Key Action Points	Those Irish fund management companies selected for participation in the data collection exercise should implement an appropriate action plan to gather all required data to allow them to complete the questionnaire by 28 February 2025.

2.5 ESMA and EIOPA publish letter relating to the EU Retail Investment Strategy

In April 2024, the Parliament adopted its negotiating position on the European Commission's proposal on the EU Retail Investment Strategy **(RIS)** while in June 2024, the Council adopted its finalised position on the proposal, paving the way for trialogue negotiations to begin in 2025.

On 13 November 2024 ESMA and EIOPA published a letter which they sent to the European Commission relating to the RIS (**Letter)**. In that Letter they:

- recommended that the introduction of any investment/saving product for retail investors (as recommended by the Council in its conclusions on the capital markets union (amongst other topics)) be built into the current RIS proposal to avoid multiple revisions of the retail investment framework in a short period of time;
- advised that they did not agree with the proposals put forward by the Council and the Parliament on the RIS in which value for money benchmarks created by ESMA and EIOPA would be used only as a supervisory tool for national competent authorities instead of mandating fund management companies to use such benchmarks in their pricing processes to satisfy themselves that the fund will deliver value for money to investors (as had been put forward by the European Commission in its proposal)
- supported the Parliament's proposal to introduce an online comparison tool for PRIIPS to allow investors access to "an unbiased source of information on all relevant product features".

A copy of the Letter is available here.

3 CENTRAL BANK OF IRELAND[5]

3.1 Central Bank publishes Dear CEO letter on marketing materials used for retail investors

On 10 October 2024, the Central Bank issued a Dear CEO letter on MiFID II marketing communication requirements to all Irish authorised MIFID investment firms, credit institutions and fund management companies providing MiFID II services to retail clients (**Dear CEO Letter**).

In the Dear CEO Letter, the Central Bank set down its key findings and expectations in respect of the common supervisory action it recently conducted on marketing and advertising requirements, as well as good practices observed by it during its review.

The Dear CEO Letter requires in-scope fund management companies (i.e. those which provide MiFID II services to retail clients) to:

- review their marketing and advertising practices against the relevant ESMA report and the findings, expectations and good practices set out in Schedule 1 to the letter;
- identify any necessary actions to be taken to address gaps; and
- have that action plan discussed and approved by the board of directors of the relevant management company by 31 January 2025. and have an action plan by 31 January 2025

A copy of the Dear CEO Letter is available here.

A copy of the related ESMA report is available here.

[5] For Central Bank of Ireland developments relating to exchange traded funds, please refer to the section entitled "Exchange-Traded Funds" below.

Key Action Points	Fund management companies which provide MiFID II services to retail clients should review their marketing and advertising practices against the ESMA report on CSA on marketing communications and the findings set out in Schedule 1 to the Dear CEO Letter and document an action plan of required steps to address any identified shortcomings and have such action plan approved by 31 January 2025.

3.2 Central Bank establishes new Fitness and Probity Unit

In July 2024, the Central Bank published a report outlining the findings of an independent review of its fitness sand probity regime which is intended to operate as a gatekeeping process to ensure that those who work in key positions within Irish regulated firms are fit and proper to do so. As explored in more detail in our briefing on the topic, the recommendations made focus on the clarity of supervision expectations, internal governance and the fairness, efficiency and transparency of the process.

On 19 December 2024, the Central Bank announced that it has established a new dedicated fitness and probity unit which will be in place from the start of 2025 and which will bring together fitness and probity activities that until now have been dispersed across the Central Bank.

The Central Bank's press release announcing the establishment of the dedicated unit is available here.

4 SUSTAINABLE FINANCE

4.1 ESMA publishes Q&A on its fund naming guidelines

On 21 August 2024, ESMA published its finalised guidelines on funds' names using ESG or sustainability-related terms **(Guidelines)**.

Any funds established on or after 21 November 2024 must comply with the Guidelines immediately while funds established prior to that date must comply with these rules by 21 May 2025.

On 13 December 2024, ESMA published three Q&A providing further guidance on specific aspects of the Guidelines (**Q&A)**.

The three Q&A are intended to ensure a smooth application of the Guidelines through common understanding of key concepts and address the following:

- the application of the PAB exclusion criteria/CTB exclusion criteria[6] to funds falling within the scope of the Guidelines which hold green bonds and other "use-of-proceeds" instruments
- ESMA's interpretation of what is meant by "meaningful investment" in sustainable investments for any fund which uses a sustainability-related term in its name
- how the term "controversial weapons" should be understood by fund management companies when applying the PAB/CTB exclusion criteria to funds which fall within the scope of the Guidelines.

A copy of the Q&A is available here.

A copy of the Guidelines is available here.

[6] Under the Guidelines, in-scope funds must comply with the exclusion criteria applicable to either EU Paris-aligned benchmarks (**PAB exclusion criteria**) or EU climate transition benchmarks (**CTB exclusion criteria**) which are set down in Article 12 of Commission Delegated Regulation (EU) 2020/1818.

A detailed overview of the Q&A is provided in a Dillon Eustace briefing on the topic which is available here.

Key Action Points	Fund management companies with funds falling within the scope of the Guidelines should review the Q&A and ensure that their compliance framework implemented to comply with the Guidelines is consistent with the approaches outlined by ESMA in its Q&A.

4.2 Central Bank publishes Notice of Intention and revises stream-lined approval process for funds implementing ESMA fund naming guidelines

On 21 October 2024, the Central Bank published a notice of intention in relation to the application of the Guidelines.

In it, the Central Bank confirms that it expects full compliance with the Guidelines from 21 November 2024 (**Notice of Intention**)[7].

On 1 November 2024, the Central Bank of Ireland issued a publication outlining its revised streamlined filing process to reflect implementation of the Guidelines.

Subject to complying with the conditions set down by the Central Bank, the revised framework allows funds falling within the scope of the Guidelines to avail of the streamlined process where they (i) change their name to comply with the Guidelines or (ii) make non-material changes to disclosure in the fund documentation necessary to bring them into compliance with the Guidelines.

A copy of the Notice of Intention is available here.

The Central Bank's publication on its revised streamlined filing process is available here.

4.3 Platform of Sustainable Finance publishes briefing note on possible SFDR categorisation framework

In September 2023, the European Commission launched a public consultation on the SFDR[8] in which it sought feedback from interested stakeholders on shortcomings of the existing framework and how the framework could be reformed to improve its useability and its ability to play its part in tackling greenwashing. As part of its consultation, the European Commission sought feedback on the possible introduction of a product classification regime.

On 17 December 2024, the Platform for Sustainable Finance (**PSF**), an advisory body to the European Commission, published a briefing note in which it set down its recommendations to the European Commission on how a categorisation system for sustainable finance products could be set up and calibrated.

In it, the PSF recommends the creation of a new product categorisation framework with the following sustainability strategies:

- **Sustainable**: those products which contribute through taxonomy-aligned investments or sustainable investments with no significant harmful activities or assets based on a more concise definition consistent with the EU taxonomy.
- **Transition**: those products with investments or portfolios supporting the transition to net zero and a sustainable economy.
- **ESG collection**: those products which exclude significantly harmful investments/activities and investing in assets with better environmental and/or social criteria or applying various sustainability features.

[7] The Guidelines apply to funds established before 21 November 2024 from 21 May 2025.
[8] Regulation (EU) 2019/2088 as amended

The PSF has proposed that each category should be subject to precise minimum criteria, clearly defined objectives and measurable key performance indicators. It has also recommended that all other products should be identified as unclassified products.

The European Commission is expected to publish a proposal to amend the SFDR in the second half of 2025.

A copy of the PSF recommendations is available here

4.4 European Commission publishes draft Commission Notice on EU Taxonomy framework

On 29 November 2024, the European Commission published a draft commission notice on the interpretation and implementation of certain legal provisions of the EU Taxonomy Environmental Delegated Act[9], the EU Taxonomy Climate Delegated Act[10] and the EU Taxonomy Disclosures Delegated Act[11] (**Draft Commission Notice**).

The Draft Commission Notice provides:

- technical clarifications responding to frequently asked questions on the technical screening criteria set down in the EU Taxonomy Climate Delegated Act and the EU Taxonomy Environmental Delegated Act
- clarifications responding to frequently asked questions on the generic "do no significant harm" (DNSH) criteria.
- clarifications on the disclosure obligations laid down in the Taxonomy Disclosures Delegated Act.

It is intended to help stakeholders to comply with applicable regulatory requirements in a cost-effective way and to ensure that the reported information is comparable and useful in scaling up sustainable finance.

The clarifications provided in the Draft Commission Notice may be of assistance to those fund management companies who fall within the scope of Article 8 of the Taxonomy Regulation.

The Draft Commission Notice has been approved in principle by the European Commission and must now be formally adopted, after which it will be published in the Official Journal of the European Union (**Official Journal**).

A copy of the Draft Commission Notice is available here.

4.5 ESA Report on principal adverse impact disclosures under the SFDR

On 30 October 2024, the European Supervisory Authorities (**ESAs**) published their annual report to the European Commission under Article 18 of the SFDR (**Report**).

The Report refers to PAI disclosures made by in-scope financial market participants by 30 June 2023 regarding the reference period from 1 January 2022 to 31 December 2022. It provides recommendations to the European Commission and the national competent authorities and Annex I to the Report also provides a summary of good and bad disclosure practices identified by the ESAs during their review of disclosures.

A copy of the Report is available here.

Key Action Points	Where relevant, fund management companies should have regard to the summary of good and bad practices identified in the Report when preparing their PAI disclosures under Article 4 of the SFDR for the period covering 1 January 2024 to 31 December 2024.

[9] Commission Delegated Regulation (EU) 2023/2486
[10] Commission Delegated Regulation (EU) 2021/2139 as amended
[11] Commission Delegated Regulation (EU) 2021/2178 as amended

4.6 CSRD Round-Up

4.6.1 Publication of European Union (Corporate Sustainability Reporting) (No 2) Regulations 2024

On 9 July 2024, the Corporate Sustainability Reporting Directive[12] was transposed into Irish law via the European Union (Corporate Sustainability Reporting) Regulations 2024 (**Irish CSRD Regulations**) and which amend the Companies Act 2014 and the Irish Transparency Regulations of 2007.

On 4 October 2024, the European Union (Corporate Sustainability Reporting) (No.2) Regulations 2024 were published (**Irish CSRD Amending Regulations**), making a number of technical clarifications to the Irish CSRD Regulations.

A copy of the Irish CSRD Regulations is available here**.**

A copy of the Irish CSRD Amending Regulations is available here

A copy of an FAQ on the CSRD published by the Department of Trade, Employment and Enterprise is available here.

Key Action Points	To the extent not already completed, fund management companies should assess whether they fall within the scope of the CSRD (and consequently the reporting obligations imposed on entities under Article 8 of the Taxonomy Regulation) and if in scope, carry out a gap analysis to determine what changes to their existing sustainability reporting regime must be made in order to comply with the CSRD reporting obligations in accordance with the relevant timeframe.

4.6.2 European Commission publishes FAQ on CSRD

On 7 August 2024, the European Commission published a draft Commission Notice containing FAQ on the implementation of the CSRD, providing guidance on the interpretation of certain provisions of the legislation, including for example the scope of the CSRD, application dates, the sustainability reporting assurance framework, value chain reporting and applicable exemptions.

The FAQ also provides a limited number of clarifications on the interpretation of the first set of the ESRS.

On 13 November 2024, a finalised version of this FAQ was published in the Official Journal.

A copy of the finalised FAQ is available here.

Key Action Points	Those entities falling within the scope of CSRD should have regard to the guidance provided in the FAQ when finalising their CSRD implementation plans.

[12] Directive (EU) 2022/2464

4.6.3 EFRAG publishes new ESRS Q&A

In November 2024, EFRAG released an updated compilation of FAQ to respond to stakeholders' technical questions on the ESRS issued under the CSRD during the period from January 2024 to November 2024 (**EFRAG November ESRS Q&A**).

On 6 December 2024, EFRAG published a further 5 explanations to respond to stakeholders technical questions on the ESRS relating to ESRS E1 (Climate Change), ESRS E4 (Biodiversity and ecosystems) and ESRS E4-5 (Impacts metrics related to biodiversity and ecosystems change) (**EFRAG December ESRS Q&A)**.

The EFRAG November ESRS Q&A is available here

The EFRAG December ESRS Q&A is available here.

4.7 ESG Ratings Regulation

On 12 December 2024, Regulation (EU) 2024/3005 on the transparency and integrity of environmental, social and governance (**ESG**) ratings activities was published in the Official Journal (**ESG Ratings Regulation**).

The ESG Ratings Regulation establishes a new regulatory framework governing the provision and distribution of ESG ratings within the EU.

It imposes obligations on EU ESG rating providers as well as certain non-EU ESG rating providers. It also amends the SFDR to require any financial market participant or financial advisor which issue and distribute an ESG rating in their marketing communications to comply with certain disclosure requirements. This includes providing a hyperlink to a website which provides information on the methodologies, models and key rating assumptions that are used in their ESG rating activities.

The new regulatory framework established under the ESG Ratings Regulation will apply from 2 July 2026.

A copy of the ESG Ratings Regulation is available here.

A detailed overview of the ESG Ratings Regulation is provided in our briefing on the topic which is available here.

Key Action Points	Fund management companies should carry out a scoping exercise to determine whether they fall within the scope of the ESG Ratings Regulation or the additional disclosure obligations being introduced to the SFDR via the ESG Ratings Regulation and if so, implement an appropriate action plan to ensure compliance with applicable obligations by 2 July 2026.

5 EXCHANGE TRADED FUNDS

5.1 Central Bank of Ireland confirms that ETF share classes may be established within non-ETF UCITS

On 1 November 2024, the Central Bank of Ireland published a revised edition of its UCITS Q&A in which it confirmed that it is now possible to have listed share classes within a UCITS fund without the requirement to re-designate that fund as a "UCITS ETF".

It has also confirmed that where a UCITS has both listed and unlisted share classes, it will permit the use of the "UCITS ETF" identifier at the level of the sub-fund or the listed share class.

This should allow existing non-ETF UCITS to create listed share classes in order to benefit of economies of scale, the existing track-record of the UCITS as well as being able to widen the potential distribution channels for the fund.

A copy of the revised Central Bank UCITS Q&A is accessible here.

A detailed analysis of this development is available in our briefing on the topic which is accessible here.

5.2 Central Bank of Ireland publishes industry communication on primary and secondary market trading of Irish ETFs

Earlier in 2024, the Central Bank carried out a thematic review under which it examined the primary and secondary market trading arrangements of Irish-domiciled ETFs (**Thematic Review**).

On 28 November 2024, the Central Bank published an industry communication to fund management companies managing Irish ETFs in which it set out the key findings from that Thematic Review (**Communication**).

The Central Bank also confirms that it expects in-scope fund management companies to review the actions outlined in the Communication and where appropriate, incorporate necessary changes to their frameworks and practices by 30 June 2025.

These relate to:

- the due diligence and ongoing monitoring of authorised participants (**APs**) and contracted market makers (**CMMs**)
- the reporting received by firms regarding the activities of APs and CMMs
- the adequacy of the number of APs and, where relevant, CCM relationships in place in respect of the relevant ETF and ensuring that effective contingency planning is in place.

A copy of the Communication is available here.

A detailed overview of the Communication is provided in our briefing on the topic which is available here.

Key Action Points	In-scope fund management companies must review the actions outlined in the Communication and where required, incorporate necessary changes to their frameworks and practices by 30 June 2025.

5.3 Central Bank of Ireland provides update on portfolio transparency in Irish domiciled actively managed ETFs

In a speech delivered by the Deputy Governor Derville Rowland on 24 October 2024, the Central Bank indicated that it is open to engaging with industry to develop a proportionate and effective approach to different models of portfolio transparency in its domestic framework.

A copy of the Speech is available here.

Key Action Points	Those fund management companies/promoters managing or considering the establishment of an actively managed ETF should monitor developments in this area over the coming months.

6 ELTIF

6.1 Publication of ELTIF Level 2 Measures in the Official Journal of the European Union

On 25 October 2024, Commission Delegated Regulation (EU) 2024/2759 was published in the Official Journal and entered into force the following day (**ELTIF Level 2 Measures).**

The ELTIF Level 2 Measures set down the specific conditions which must be satisfied in order for an ELTIF to be structured as an open-ended fund. These include the maximum redemptions permitted by open-ended ELTIFs as well other specific liquidity management provisions which must be complied with in order for an ELTIF to permit redemptions during the life of the fund. The measures also set down the circumstances in which financial derivative instruments can be used for hedging purposes and prescriptive rules on the specific costs disclosures which must be met by an ELTIF.

On the same date, the Central Bank published details of its approval process for open-ended ELTIFS which are marketed to (i) professional investors and qualified investors and (ii) retail investors.

A copy of the ELTIF Level 2 Measures is available here.

A more detailed analysis of the ELTIF Level 2 Measures and the Central Bank approval process for open-ended ELTIF funds is provided in our briefing on the topic which is available here.

A Dillon Eustace guide on the Irish ELTIF is available here.

7 DORA

7.1 DORA Technical Standards Update

The following technical standards and guidelines under DORA[13] have been adopted by the European Commission[14] or published in the Official Journal during the period 30 September 2024 to 31 December 2024:

- ITS on the Register of Information. The ITS were published in the Official Journal on 2 December 2024 and can be found here.
- RTS on major ICT-related incidents and significant cyber threats reporting. The Regulation was adopted by the European Commission on 23 October 2024 and can be found here.
- ITS on reporting details for major ICT -related incidents. The Regulation and its Annex, which was adopted by the European Commission on 23 October 2024, can both be found here.
- RTS on the harmonisation of conditions enabling the conduct of oversight activities in the EU,. The Regulation was adopted by the European Commission on 24 October 2024 and can be found here .
- The final version of the joint guidelines on the oversight co-operation and information exchange between the ESAs and competent authorities under DORA was published by the ESAs on 6 November 2024 and can be found here.

RTS to specify the criteria for determining the composition of the joint examination team. The RTS was adopted by the European Commission on 16 December 2024 and can be accessed here.

7.2 ESAs publish statement on the application of DORA

On 4 December 2024, the ESAs issued a statement concerning the application of DORA ahead of the application of DORA on 17 January 2025 (**Statement**).

The ESAs highlight in the Statement that financial entities and third-party service providers must adopt a "robust, structured approach" to ensure that obligations under DORA are met. The ESAs also categorically state that DORA does not provide

[13] The Digital Operational Resilience Act (Regulation (EU) 2022/2554)
[14] Delegated acts adopted by the European Commission are subject to a period of scrutiny by the European Parliament and the Council of the EU and will be published in the Official Journal of the EU and enter into force if the European Parliament or the Council of the EU do not object to them during the specified period, in accordance with Article 290(2) of the Treaty on the Functioning of the EU

for a transitional period and therefore there is an onus upon financial entities to identify gaps between their internal setups and the requirements set out under DORA in a timely manner.

The ESAs also indicate that financial entities should: (i) prepare for the new reporting obligations under DORA, including ensuring that registers of ICT third-party providers' contractual arrangements are available and correct early in 2025; and (ii) be equipped to classify and report their major ICT-related incidents from the outset. The Statement also highlights that competent authorities should be prepared to oversee compliance with the DORA requirements using a risk-based approach.

A copy of the Statement can be found here.

Key Action Points	Fund management companies should review the contents of the Report when preparing their registers of information of contractual arrangements with ICT third-party service providers.

7.3 Joint Committee of ESAs report on dry run exercise relating to registers of information under DORA

On 17 December 2024, the ESAs published a report[15] following a dry run exercise relating to the registers of information of contractual arrangements with ICT third-party service providers, which financial entities are obliged to maintain and report under DORA (**Report**).

Originally launched in April 2024, the dry run exercise aimed to test the reporting processes implemented by the ESAs and to assist financial entities in ensuring their registers of information comply with the related ITS

The Report sets out the ESAs' key findings which primarily related to the quality of data reported. While 6.5% of registers passed all data quality checks, 86% of register failed the data quality check related to missing mandatory information. Many registers also failed the check related to the use of unique identifiers for the financial entities and ICT third-party service providers.

The ESAs noted that key findings in the Report as well as all supplementary material should be carefully considered by all financial entities as they prepare for compliance with DORA.

A copy of the Report can be found here.

Key Action Points	Fund management companies should review the contents of the Report when preparing their registers of information of contractual arrangements with ICT third-party service providers.

7.4 Central Bank updates its DORA Communications and Publications webpage

On 6 December 2024, the Central Bank of Ireland provided an updated on the register of information and threat-led penetration testing (**TLPT**) on its DORA Communications and Publications webpage.

- Registers of Information: Financial entities are obliged to submit their Registers of Information to the Central Bank by close of business on 4 April 2025. Information on the Registers should be correct as at 31 March 2025. The Central Bank state that they will provide more information on how to submit Registers of Information, through the CBI Portal, in Q1 2025.

- TLPT: The Central Bank confirmed it would engage with in-scope firms directly in the coming weeks in relation to TLPT. This will apply on a mandatory basis only to a limited number of firms which meet the criteria under DORA.

[15] ESA 2024 35

The Central Bank's DORA webpage can be found here.

Key Action Points	Irish fund management companies should refer to the Central Bank DORA webpage to ensure that DORA implementation plans align with supervisory expectations.

7.5 EBA Updates to Single Rulebook and Q&A

On 11 December 2024 the European Banking Authority (**EBA**) updated its Single Rulebook Q&A tool on DORA to include three additional Q&As addressing the following matters:

- the interpretation of the critical services affected for the purposes of the classification of major incidents (Article 18 of DORA and Article 6 of RTS on Classification of Major Incidents[16]);
- duplicate ICT incident reporting (**Recital 51 of DORA**); and
- the exemption for non-EU ICT intra-group service providers (**Article 31 of DORA**).

The Single Rulebook Q&A is available here.

Key Action Points	Where relevant, fund management companies should have regard to the Single Rulebook Q&A when finalising DORA implementation plans.

8 EMIR

8.1 EMIR 3.0 enters into force

On 24 December 2024, the EMIR 3.0 Regulation entered into force, introducing revisions to the clearing requirements, including changes to the clearing calculation rules and the introduction of an obligation to hold an active account with at least one EU CCP in certain circumstances. Other revisions to risk mitigation requirements, reporting requirements, changes to the certain exemptions from the margining and clearing requirements and others (including the requirement for validation of initial margin models) have also been introduced. While the majority of the EMIR 3.0 provisions apply from that date, certain requirements under the Regulation adhere to alternative implementation timelines.

EMIR 3.0 Regulation also incorporates certain amendments to the Money Markets Fund Regulation[17] including amendments to the counterparty risk limit therein which apply from 24 December 2024.

The EMIR 3 Regulation can be found here.

The EMIR 3.0 Directive amends the UCITS Directive[18] to disapply counterparty risk limits where a derivative is cleared at an authorised or recognised CCP under EU law. The reference to an "OTC" derivative has been removed and hence the counterparty risk limit will apply to both OTC and ETD derivatives unless they cleared at an authorised or recognised CCP under EU law.

The amendments under the EMIR 3.0 Directive will become applicable from 25 June 2026 as Member States need to transpose the amendments into national law.

[16] Commission Delegated Regulation (EU) 2024/1772
[17] Regulation 2017/1131/EU
[18] Directive 2009/65/EC as amended

The EMIR Directive is available here.

For a detailed overview of the implications of the EMIR Regulation and the EMIR Directive for funds and their management companies, please see our recent briefing which can be accessed here.

Key Action Points	Funds and fund management companies should assess the implications of the EMIR 3.0 Regulation and the EMIR 3.0 Directive on their existing EMIR compliance frameworks and identify any steps that need to be taken to ensure compliance with the new framework by applicable deadlines.

9 DATA PROTECTION

9.1 EDPB publishes opinion on certain obligations following from the reliance on processors and sub-processors

On 9 October 2024, the European Data Protection Board (**EDPB)** published an opinion on certain obligations following from the reliance of data controllers on processors and sub-processors (**Opinion**).

The Opinion provides as follows:

- controllers should have information concerning the identity of all processors and sub-processors readily available at all times in order to meet their obligations under Article 28 of the GDPR
- controllers are also obliged to verify whether processors and sub-processors provide "sufficient guarantees" regardless of the risk to the rights and freedoms of data subject, although the extent of such verification may vary, notably on the basis of the risks associated with the processing
- The ultimate decision and responsibility of engaging a specific sub-processor lies with the controller which should consider whether requesting a copy of such contracts and reviewing them is necessary to be able to show GDPR compliance
- for transfers outside the EEA between two sub-processors, the processor must prepare the necessary documentation in its role as data exporter, such as the documentation relating to the ground of transfer used, the transfer impact assessment and possible supplementary measures. The controller should also assess the documentation and be able to present it to the relevant competent data protection authority if required.

A copy of the Opinion can be found here.

Key Action Points	Funds and fund management companies should assess existing GDPR compliance arrangements against the EDPB's expectations set down in the Opinion and address any gaps identified.

9.2 EDPB publishes guidelines on procession of personal data based on legitimate interest published for consultation by EDPB and ECJ ruling on concept of legitimate interests

On 8 October 2024, the EDPB published guidelines on the processing of personal data based on legitimate interest for consultation (**Guidelines)**. The Guidelines state that three cumulative conditions must be met to establish a basis of "legitimate interest" for the processing of personal data namely:

- The pursuit of a legitimate interest by the controller or by a third party;
- The necessity to process personal data for the purposes of pursuing the legitimate interest; and
- The interests or fundamental freedoms and rights of individuals do not take precedence over the legitimate interest(s) of the controller or of a third party (balancing exercise).

The Guidelines elaborate on how the above conditions should be assessed in practice and provide specific examples of cases such as fraud prevention, direct marketing and information security where a legal basis for processing personal data can be found.

The public consultation period regarding the Guidelines ended on 20 November 2024.

The responses to the consultation on the Guidelines are currently being considered by the EDPB and will be finalised in due course.

A copy of the Guidelines can be found here[19].

Key Action Points	Funds and fund management companies should keep a watching brief on the adoption of finalised guidelines on legitimate interests by the EDPB.

10 MACROPRUDENTIAL FRAMEWORK

10.1 Central Bank of Ireland and ESMA respond to the European Commission's consultation on the adequacy of macroprudential policies for NBFI

On 22 November 2024, the Central Bank published its response to the European Commission's consultation on the adequacy of macroprudential policies for non-banking financial intermediation (**NBFI)** (**Consultation**).

In its response, the Central Bank identified the main sources of vulnerabilities in the investment funds sector as stemming from (i) vulnerabilities at a fund cohort level, including leverage and liquidity mismatch and (ii) the interconnectedness of the funds sector which can transmit and/or amplify the effects of a shock to other parts of the financial system or real economy.

The Central Bank has advocated for the introduction of resilience-enhancing measures aimed at fund cohorts which are sufficiently flexible. It notes that policy intervention should be a careful balance between the costs and benefits for the broader economy and that global coordination is a critical enabler when designing a macroprudential policy framework for the funds sector.

On the same date, ESMA published its response to the Consultation in which it makes a number of proposals in the area of liquidity management, reforming the MMFR, progressing towards data driven supervision and enhancing coordination between competent authorities by the creation of a formal reciprocation mechanism for leverage limits under AIFMD.

A copy of the Central Bank response to Consultation is available here.

A copy of the ESMA response to the Consultation is available here.

[19] The concept of legitimate interests under the GDPR was also recently considered by the ECJ in the case of Koninklijke Nederlandse Lawn Tennisbond v Autoriteit Persoonsgegevens. A copy of the judgement of the ECJ is available **here.**

10.2 FSB publishes policy recommendations on liquidity preparedness for margin and collateral calls

On 10 December 2024, the Financial Stability Board (**FSB)** published its recommendations on how to enhance the liquidity preparedness of non-bank market participants for margin and collateral calls in centrally and non-centrally cleared derivatives and securities markets (**FSB Recommendations**).

The FSB has put forward 8 recommendations which are categorised under the headings of (i) liquidity risk management practices and governance, (ii) liquidity stress testing and scenario design and (iii) collateral management practices.

A copy of the FSB Recommendations is available here.

10.3 FSB publishes consultation paper on leverage in non-bank financial intermediation

On 18 December 2024, the FSB published a consultation paper containing proposed policy recommendations aimed to address leverage in NBFI where it can create financial stability risks (**Consultation).**

The entities within the scope of the Consultation include non-bank financial firms that use leverage (whether financial or synthetic) including hedge funds and other leveraged investment funds.

The recommendations put forward by the FSB in its Consultation are categorised under the headings of (i) risk identification and monitoring, (ii) NBFI leverage in core financial markets, (iii) counterparty credit risk management, (iv) the principle of "same risk, same regulatory treatment, (v) cross-border cooperation and coordination.

The Consultation forms part of the broader FSB work programme on enhancing the resilience of NBFI.

The Consultation closes on 28 February 2025.

A copy of the Consultation is available here.

10.4 IOSCO publishes consultations on its revised recommendations for liquidity risk management and its related guidance

On 11 November 2024, IOSCO published a consultation seeking feedback on its proposed revised recommendations for liquidity risk management for collective investment schemes (**Recommendations Consultation**).

The 17 recommendations put forward by IOSCO are divided into six categories, namely (i) CIS design process, (ii) liquidity management tools and measures, (iii) day-to-day liquidity management practices, (iv) stress testing, (v) governance and (vi) disclosures to investors and authorities. Recommendations put forward by IOSCO include categorising open-ended funds according to the liquidity of their assets and encouraging the use of a broad set of liquidity management tools.

On the same date, it also published its consultation on related guidance for open-ended funds for effective implementation of the recommendations for liquidity risk management (**Guidance Consultation**).

The deadline for submitting responses to both consultations is 11 February 2025.

IOSCO aims to produce its final recommendations and related guidance in the first half of 2025.

A copy of the Recommendations Consultation and the Guidance Consultation are available here.

11 MISCELLANEOUS

11.1 European Commission consultation on the functioning of the EU securitisation framework

On 9 October 2024, the European Commission published a targeted consultation on the functioning of the EU Securitisation Regulation.

The consultation seeks to gather views and collect evidence from experience of relevant stakeholders with experience of the functioning of the EU securitisation framework. It seeks feedback on a broad range of issues, some of which will be of interest to fund management companies investing in securitisations on behalf of funds under management.

These include for example:

- The effectiveness of the securitisation framework
- Scope of application of the Securitisation Regulation
- Due diligence requirements imposed on EU institutional investors (including UCITS management companies and AIFMs)
- Transparency requirements

The consultation closed on 4 December 2024.

Responses to the consultation will be considered by the European Commission when deciding as to whether to prepare a formal proposal to reform the existing framework.

A copy of the consultation is available here.

11.2 Reform of EU settlement cycle

Following the implementation of a T+1 settlement cycle by the US, Canada and Mexico in May 2024, ESMA was tasked by the European Commission to assess the appropriateness of shortening the EU settlement cycle in the EU to improve settlement efficiency in the EU and align with other major jurisdictions.

On 18 November 2024, it published a report in which it recommended a move to a T+1 settlement cycle from Quarter 4 2027 given the increased efficiency and resilience of post-trade processes that such a change would bring (**Report**).

In the Report, ESMA has indicated that its work to identify solutions to challenges posed by T+1 will be completed by Quarter 3 2025 (with those solutions to be implemented by end of 2026 and testing of all systems ahead of 2027).

This follows the issue of a public statement by the European Commission, the European Central Bank and ESMA (**Joint Statement**) on 15 October 2024 in which they announced the intention to establish a governance structure, incorporating the EU financial industry, to oversee and support the technical preparations for any future move to T+1.

A copy of the Report is available here.

A copy of the Joint Statement is available here.

11.3 Reform of the EU Benchmarks Regulation

On 17 October 2023, the European Commission issued a proposal to reform the Benchmarks Regulation[20] to reduce the regulatory and administrative burden imposed on EU benchmark users and EU benchmark administrators.

On 12 December 2024, the Council announced that political agreement between it and the Parliament on reforms to the Benchmarks Regulation had been reached.

Under these reforms, the scope of the existing regime will be significantly reduced so that only those fund management companies and corporate funds which use (i) benchmarks deemed “critical” or “significant” under the new framework, (ii) EU

[20] Regulation 2016/1011/EU as amended

Paris-aligned benchmarks and EU Climate Transition benchmarks and (iii) certain commodity benchmarks will be subject to obligations under the Benchmarks Regulation.

This provisional agreement must now be confirmed by both the Council and the Parliament before being formally adopted by both institutions.

The revised framework is expected to apply from 1 January 2026.

The Council's statement on reaching political agreement is available here.

The European Commission's statement on the Council and the Parliament reaching political agreement is available here.

11.4 Further package of economic sanctions against Russia introduced

On 16 December 2024, the 15th package of sanctions against Russia was adopted by the Council.

Measures impacting the financial sector include:

- 84 additional listings which will be subject to assets freeze measures.
- A new loss recovery derogation which will allow for the release of cash balances held by EU CSDs and will enable CSDs to request EU Member State competent authorities to unfreeze cash balances and use them to meet their obligations with their clients as well as a no liability clause for EU CSDs which clarifies that EU CSDs are not liable to pay interest or any other form of compensation to the Central Bank of Russia beyond interest contractually due.
- a prohibition on the recognition or enforcement in the European Union of injunctions, orders, judgments or other court decisions pursuant to or in relation to Article 248 of the Arbitration Procedure Code of the Russian Federation or equivalent Russian legislation.
- the extension of some existing derogations that enable EU operators to divest from Russia.

A complete overview of the new package published by the European Commission is available here.

A consolidated FAQ on sanctions against Russia published by the European Commission is available here.

The Central Bank's webpage on EU restrictive measures relating to actions in Ukraine is available here.

11.5 Companies (Corporate Governance, Enforcement and Regulatory Provisions) Act 2024

On 12 November 2024, the Companies (Corporate Governance, Enforcement and Regulatory Provisions) Act **(Act)** was published on the Irish Statute Book.

The stated policy objective of the Act is to enhance and amend the legislative framework provided by the Companies Act 2014 (**Companies Act)** in the areas of governance, administration, insolvency, enforcement and supervision.

Of particular relevance to fund management companies and Irish domiciled investment funds established as public limited companies are:

- the provisions giving companies the option to hold general meetings either partially or wholly by the use of electronic communications where this is not expressly prohibited under the company's constitutive rules and subject to certain specific requirements set down in the Act, including allowing shareholders to participate in the meeting via electronic means; and

- providing for flexibility in the execution of documents containing the company seal so that a company seal and the necessary signatures can be on separate documents which can then be counted as one single document for the purposes of the Companies Act.

These provisions came into operation on 3 December 2024.

A copy of the Act is available here.

11.6 Listing Act package published in the Official Journal and related consultations published by ESMA

On 14 November 2024, the legislation comprising the Listing Act package was published in the Official Journal.

The Listing Act package of measures introduced comprise of the following:

- Regulation (EU) 20204/2809 which amends the EU Prospectus Regulation, Market Abuse Regulation and MiFIR (**Listing Regulation**);
- Directive (EU) 2024/2811 amending MiFID II and repealing Directive 2001/34/EC (**Listing Directive**); and
- Directive (EU) 2024/2810 on multiple-vote share structures (**Multiple Vote Shares Directive**)

The objective of the package is to simplify the listing rules for companies that want to list on EU public stock exchanges to make listing in the EU more attractive to companies and to develop a more cost-efficient regulatory regime.

The introduction of the Multiple Vote Shares Directive is intended to allow companies whose shares are listed on an EU stock exchange to benefit from a more flexible governance structure by allowing founders and owners to continue to maintain control over their companies while benefitting from being able to access funding generated through listing the shares of the company on an EU stock exchange.

The Listing Directive must be transposed into national law of EU Member States by 5 June 2026 and the Multiple Vote Shares Directive must be transposed into national law of EU Member States by 5 December 2026.

The majority of the provisions contained in the Listing Regulation apply from 5 June 2026.

A suite of related consultations have been launched by ESMA since the package of measures were published in the Official Journal. These include:

- A consultation on draft technical advices to the European Commission on the amendments to the research provisions in the MIFID II Delegated Directive in the context of the Listing Act;
- A consultation on draft regulatory technical standards for the establishment of an EU code of conduct for issuer-sponsored research.
- A consultation to gather feedback following changes to the Market Abuse Regulation and MIFID II introduced by the Listing Act.

A copy of the Listing Regulation is available here.

A copy of the Listing Directive is available here.

A copy of the Multiple Vote Shares Directive is available here.

Key contacts

If you have any questions in relation to the content of this update, to request copies of our most recent newsletters, briefings or articles, or if you wish to be included on our mailing list going forward, please contact any of the team members below or your usual contact in Dillon Eustace.

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