

## Asset Management & Investment Funds

**QL** Quarterly Legal &  
**RD** Regulatory Developments

October 2022 to December 2022

Global Legal and Professional Services

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<b>KEY DATES</b>	
<b>2023</b>	
<b>1 January 2023</b>	<b>Implementation deadline for the Level II Regulations under SFDR as amended by the Taxonomy Regulation (relevant disclosures to be addressed in advance of this date, including with reference to the website disclosure rules in Chapter IV of the SFDR Level II)</b>
<b>1 January 2023</b>	<b>SFDR Level II financial report disclosure template to be incorporated in annual reports published for funds subject to SFDR Article 8 or 9 (in accordance with financial report rules in Chapter V of the SFDR Level II)</b>
<b>1 January 2023</b>	<b>Implementation of the Taxonomy Climate Complementary Delegated Act relating to the two environmental objectives of climate change mitigation and climate change adaptation</b>
<b>1 January 2023</b>	<b>Central Bank deadline for multi-manager UCITS' and RIAIFs' compliance with ESMA Q&amp;A on performance fees which precludes the payment of performance fees to individual managers if overall the fund has underperformed</b>
<b>1 January 2023</b>	<b>Commencement of Protected Disclosures (Amendment) Act, 2022 which requires boards to establish, or update existing, internal reporting processes and procedures facilitating whistleblowers</b>
<b>Pre-end February 2022 (TBC)</b>	<b>Commission adopted SFDR Level II amendments, reflecting the inclusion of gas and nuclear activities in the Taxonomy Regulation are expected to enter into force. The amendments will impact both the pre-contractual and periodic disclosure templates for Article 8 and 9 funds.</b>
<b>1 December 2023</b>	<b>Operational resilience action plans taking account of the Central Bank's operational resilience guidance to be in place</b>

This is a condensed version of our Asset Management and Investment Funds Legal and Regulatory Report setting out key developments during the quarter.

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## 1. AIFMD DEVELOPMENTS

### 1.1 Central Bank AIFMD Q&A updates – October 2022

On 5 October 2022, the Central Bank of Ireland (the "**Central Bank**") published the 45<sup>th</sup> edition of its AIFMD [Q&A](#) to include two new Q&As ID's 1154 & 1155 providing clarifications for QIAIFs raising capital under a formally agreed commitment basis in respect of:

- ID1154 on the application of specific investment limits ("QIAIFs which invest more than 50% of net assets in another investment fund"); and
- ID1155 on the loan origination QIAIF leverage rules contained in the AIF Rulebook.

### 1.2 Central Bank AIFMD Q&A updates – December 2022

On 21 December 2022, the Central Bank published the latest version (46<sup>th</sup> Edition) of its AIFMD [Q&A](#).

This edition revises Q&A ID 1126, which considers if AIFs in scope of the PRIIPs Regulation (EU) No 1286/2014 are required to file Packaged Retail and Insurance-based Investment Product (PRIIPs) Key Information Document (KID) with the Central Bank. The Q&A sets out the Central Bank's requirement that Retail Investor AIFs which produce PRIIPs KIDs shall file these on an ex post basis. This will include periodic updates to existing KIDs. The first annual reporting of such KIDs will take place in January 2024. Once the reporting requirements are finalised the Central Bank will advise accordingly.

The update also confirms that Qualified Investor AIFs are not required to file PRIIPs with the Central Bank.

### 1.3 ESMA AIFMD Q&A updates

On 16 December 2022, ESMA published an updated version of its [Q&A](#) on the application of the AIFMD.

An additional Q&A is inserted at Section XI "Scope" namely, "Are managers of special purpose acquisition companies ("**SPACs**") subject to the AIFMD?"

ESMA notes that SPACs are not yet legally defined by EU law, and indicates that that "there are significant variations between the general structuring of relevant vehicles and concrete modalities of their transactions". ESMA has listed tests to make an assessment on a case-by-case basis whether a given SPAC meets the definition of an "AIF" under Article 4(1)(a), or qualifies as a "holding company" under Article 4(1)(o) of the AIFMD, while paying close attention to the elements described in the [ESMA Guidelines on Key Concepts of the AIFMD](#).

## 2. UCITS DEVELOPMENTS

### 2.1 Central Bank UCITS Q&A updates

On 21 December 2022, the Central Bank published its latest edition of the Central Bank's UCITS [Q&A](#) featuring three new Q&As on PRIIPs KID filing requirements.

- ID 1107 on whether a UCITS which is seeking authorisation or is seeking approval of a new sub-fund and intends to produce a PRIIPs KID and not a UCITS KIID is required to file the PRIIPs KID with the Central Bank on authorisation / approval of the UCITS (and subsequently);
- ID 1108 on whether a UCITS which is seeking authorisation or is seeking approval of a new sub-fund and intends to produce a PRIIPs KID and a UCITS KIID is required to file the PRIIPs KID with the Central Bank on authorisation / approval of the UCITS (and subsequently); and

- ID 1109 on whether an existing UCITS, which produces a PRIIPs KID, is required to file the PRIIPs KID with the Central Bank on 1 January 2023.

The Central Bank also published accompanying [website guidance](#) on the PRIIPs KID filing process.

Accordingly, from 1 January 2023, where a UCITS produces a PRIIPs KID instead of a UCITS KIID, a PRIIPs KID and accompanying confirmation in the prescribed form from the responsible person or its legal advisor should be submitted to the Central Bank in the following circumstances:

- prior to the authorisation of each UCITS; and
- prior to the approval of a new sub-fund of an umbrella UCITS.

The Q&As confirm that where an existing UCITS produces a PRIIPs KID, there is no requirement to file the PRIIPs KID with the Central Bank on 1 January 2023. The first reporting/submission of these PRIIPs KIDs to the Central Bank is expected to take place in 2024. Periodic updates to such PRIIPs KIDs will only be required to be filed with the Central Bank after the first reporting exercise. Once finalised, the Central Bank intends to publish further details of the reporting requirements for PRIIPs KIDs.

### 3. CENTRAL BANK UPDATES

#### 3.1 CP152 on own funds requirements for UCITS management companies and AIFMs authorised for discretionary portfolio management

On 1 December 2022, the Central Bank published a [consultation paper](#), CP152 on own funds requirements for UCITS management companies and AIFMs authorised for discretionary portfolio management (the "**Consultation**") proposing amendments to the applicable prudential rules.

A UCITS management company or AIFM that meets all of the conditions to be a 'small and non-interconnected firm' will be subject to the own funds requirement set out in Regulation 17 of the UCITS Regulations and Regulation 10 of the AIFM Regulations respectively. The conditions to qualify as a 'small and non-interconnected firm' will be modelled on similar conditions applied under the Prudential Requirements for Investment Firms Regulation (EU) 2019/2033 ("**IFR**") and are defined in Annex I and Annex II of the Consultation respectively by the proposed insertion of Regulation 100A of the Central Bank UCITS Regulations and the proposed revised Chapter 3 of the AIF Rulebook.

A UCITS management company or AIFM that is not a 'small and non-interconnected firm' will be required to have own funds of, at least the highest of:

- the total amount of initial capital and own funds which the UCITS management companies or AIFM is required to hold pursuant to the UCITS Regulations or the AIFM Regulations, as applicable; or
- a new 'Risk to Client K-Factor' requirement amount calculated in accordance with proposed new Regulation 100A of the Central Bank UCITS Regulations; or, a proposed amendment to Chapter 3 of the Central Bank AIF Rulebook, which will be imposed as a condition on the authorisation of each AIFM, as relevant.

The Consultation proposes that UCITS management companies and AIFMs that are not small and non-interconnected firm should also be able to limit the increase in their own funds requirement arising from the introduction of a K-Factor requirement to twice their fixed overheads requirement for the period up to the end of June 2026.

The Central Bank invites stakeholders to provide comments on the proposals outlined within this Consultation. The consultation period ends on 23 February 2023.



Please also refer to our recent [advisory](#) on the proposals in the Consultation.

3.2 Dear CEO Letter with follow up findings from thematic review of fund management companies' governance, management and effectiveness (*This is a further update to section 3.4 of the report covering the fourth quarter of 2020*)

On 7 December 2022, the Central Bank issued a '[Dear CEO' letter](#) (the "**Letter**") setting out the findings of its recently completed thematic review assessing how Fund Management Companies have implemented the Central Bank's organisational requirements and guidance.

The survey results communicated in the Letter acknowledge that firms have made progress in implementing the actions expected of fund management companies to ensure that they meet the required standards. The Central Bank notes that it has seen encouraging signs that the step change it has sought is starting to take place, but notes that more work is to be done to ensure firms achieve the expected standards.

The Central Bank expects that this letter will be discussed by the Board of fund management companies and that any areas requiring improvement that directly relate to a firm are given due consideration to ensure robust and appropriate governance arrangements are in place.

Please refer to our recent [advisory](#) outlining the Central Bank's findings and recommendations contained in the Letter.

3.3 Second Financial Stability Review of 2022 (*This is a further update to section 3.3 of the report covering the fourth quarter of 2021*)

On 24 November 2022, the Central Bank published its second [financial stability review](#) of 2022 (the "**Review**"). The Review outlines the Central Bank's assessment of key risks facing the financial system, the resilience of the economy and financial system to adverse shocks, and policy actions to safeguard stability.

As part of the Review, the Central Bank announced that following its Consultation Paper 145 ("**CP145**") on macro-prudential measures for the Irish property fund sector, the Central Bank is introducing its [Macroprudential Policy framework for Irish Property Funds](#) (the "**Policy Document**"). This Policy Document sets out the specific framework design of the macro-prudential leverage limits and liquidity timeframes. The Policy Document appends the final Central Bank Guidance to limit liquidity mismatches for property funds – entitled 'Guidance on redemption terms for property funds' (the "**Guidance**").

The Central Bank has also published its [Feedback Statement](#) in response to CP145 together with the individual responses to CP145.

Governor Makhlouf delivered [remarks](#) on the publication of the Review. The Governor notes that the measures aim to safeguard the resilience of this growing form of financial intermediation so that property funds are better able to absorb – rather than amplify – adverse shocks. He notes that to address risks stemming from leverage in Irish property funds, a 60% leverage limit (total debt to total assets) is being introduced. The limit applies to funds domiciled in Ireland, authorised under domestic legislation, and investing over 50% of their portfolio in directly or indirectly held Irish property assets.

The Governor noted these "measures are being applied to ensure that investment funds are better able to absorb, rather than amplify, downturns in the commercial property market. This will, in turn, better equip the sector to continue to serve as a sustainable source of financial intermediation."

Reflecting both the current macroeconomic environment and the expectation that funds make gradual and orderly progress to the leverage limit, there is a five-year implementation period for existing funds. The Guidance to address risks stemming from liquidity mismatch observed in Irish property funds, sets out the expectation that funds provide for a minimum liquidity timeframe of 12 months, taking into

account the nature of the assets held. The Guidance will have an 18-month implementation period. Both the leverage limit and the Guidance will apply immediately following publication for newly authorised Irish property funds.

On 3 November 2022, the Central Bank notified ESMA and the European Systemic Risk Board of its intention to impose leverage limits on Irish real estate funds. According to Article 25(3) of the AIFMD, ESMA has to provide advice to the CBI, assessing whether the conditions for taking action appear to be met and whether the proposed measures are appropriate. ESMA assessed the risks posed by Irish real estate funds and found that a significant number of them had elevated levels of leverage. For Irish real estate funds using leverage, such leverage is, on average, higher than in equivalent funds in the rest of the EU. In addition, considering the large market footprint of Irish real estate funds on the commercial real estate ("CRE") market, these funds have the potential to amplify shocks affecting this market through disorderly asset sales, with broader macro-financial implications.

On 24 November 2022, ESMA published its formal [advice](#) concluding that the conditions for taking actions under AIFMD are met and that the proposed measure is justified and should contribute to improving the resilience of real estate funds and to limiting the build-up of risk in the CRE sector. In the advice, ESMA recommends that the Central Bank closely monitor the evolution of the Irish real estate sector to ensure the effectiveness of its measure and to assess the necessity to recalibrate the leverage limit.

On 7 December 2022, in light of the new macroprudential policy framework for Irish property funds the Central Bank updated its requirements as part of the [pre-submission process](#) for Qualifying Investor AIFs, which invest in Irish property assets.

Our recent [advisory](#) provides an overview of the impact of the introduction of the leverage limit and the Guidance on minimum liquidity timeframes and outlines key actions for AIFMs of in-scope property funds.

### 3.4 Beneficial Ownership Register *(This is a further update to section 3.1 of the report covering the third quarter of 2022)*

On 11 November 2022, the Central Bank of Ireland (the "**Central Bank**") issued an [update](#) in relation to the impending changes to the Beneficial Ownership Register for certain financial vehicles, including ICAVs, unit trusts, CCFs and ILPs. In addition the Central Bank published on its [website](#) the new beneficial ownership template, the updated [FAQ](#) as well as an updated [guidance document](#) in connection with the mandatory resubmission of beneficial ownership information to include a PPS number, or a Central Bank reference number as applicable, for each beneficial owner. This follows previously issued correspondence from the Central Bank in August 2022 relating to the collection of this information for the purpose of the register

The deadline for completion by ICAVs, unit trusts, CCFs and ILPs of the re-submission using the updated template is Wednesday, 7 December 2022.

On 22 November 2022, the European Court of Justice ("**ECJ**") [ruled](#) that the changes introduced by the Fifth Money Laundering Directive (EU 2018/843) ("**5AMLD**"), allowing unrestricted public access to beneficial ownership registers, is in breach of Articles 7 and 8 of the Charter of Fundamental Rights of the European Union.

Following the judgment, the search facility on the Irish register for beneficial ownership information has been suspended and is providing access to "designated persons" only.

On 19 December 2022, the Central Bank now revised its [guidance](#) on the Beneficial Ownership Register of Certain Financial Vehicles. The revised guidance states, "further to a ruling by the European Court of Justice regarding public access to beneficial ownership registers [ECJ No.188 of 2022], access

requests by members of the public will not be processed, pending clarification of the legislative position by the law making body."

The recent [post](#) from the Walkers' Regulatory group entitled "*ECJ ruling deems public access to beneficial ownership registers under 5AMLD invalid*" provides an overview of the impact of this ruling.

### 3.5 Central Bank speeches during the period

#### (a) *Financial Stability Conference speeches*

The Central Bank hosted its inaugural Financial System Conference on 2 – 3 November 2022.

The Central Bank published an [address](#) delivered by Governor Gabriel Makhlouf entitled "Regulating for Stability and Positive Outcomes" at the Financial System Conference. This address focuses on the role of regulation of the non-bank sector. The Governor flagged that the Central Bank would introduce leverage limits for property funds connected to the domestic economy, and calls for the need for global and European coordination on the issue.

The Central Bank also published [remarks](#) by Derville Rowland, Deputy Governor, Consumer and Investor Protection entitled "Delivering for the consumer in a changing world" which focused on the engagement being undertaken by the Central Bank on consumer protection issues.

#### (b) *Asset Management Sustainable Finance Seminar*

On 14 November 2022, the Central Bank published [remarks](#) delivered by Derville Rowland, Deputy Governor, Consumer and Investor Protection at the Central Bank's Asset Management Sustainable Finance [Seminar](#) where she outlines expectations for the asset management and funds sector with regard to sustainable finance.

Her remarks coincided with the publication by the Central Bank of an [industry communication](#) 'Sustainable finance and the asset management sector: Disclosures, investment processes & risk management' as further outlined at section 3.8 of this report below.

#### (c) *Financial Services Ireland Annual Dinner*

On 14 November 2022, Deputy Governor Sharon Donnery delivered [remarks](#) at the Financial Services Ireland Annual Dinner entitled "Charting the course - leading financial services through complexity and change".

Some key takeaways from the speech are as follows:

- *Authorisations and the Central Bank's gatekeeper role*

Ms Donnery noted there was now a "very different pipeline of firms... applying to be regulated - firms with novel business models, and firms applying for a number of parallel authorisations". The speech reiterated that authorisation commences a regulatory and supervisory relationship that will continue for the duration of a firm's existence as a regulated entity.

Ms Donnery emphasised the Central Bank was concerned mainly with whether those firms can demonstrate their seriousness. She notes "our experience has been and continues to be that firms which understand their proposed business model, the risks inherent in that and the compliance obligations in place to protect the wider system, are the firms which find the authorisation to be most straightforward".

- *Crypto products*

Ms Donnery noted the Central Bank is seeing technology-driven new products, for example in the crypto area, which can develop at a scale and pace – and at times can raise serious questions around sustainability and raise concerns relating to consumer and investor protection.

- *Individual accountability framework*

Ms Donnery noted that the individual accountability framework will provide the Central Bank with measures so it can pursue individuals directly for their misconduct rather than only where they have participated in a firm’s wrongdoing.

She noted that “consternation” in the industry about the enforcement side of the incoming rules to make it easier to hold senior executives to account for misconduct “misses the point entirely”, as the regime is designed to improve standards. She said the Central Bank will “engage widely” on the planned regime as part of a consultation process before it come into operation.

- *Approach to supervision*

Ms Donnery noted that one of her key priorities is to “transform” the Central Bank’s approach to regulation and supervision. “We apply a risk-based approach to supervision, recognising that resources are finite, and our attention and supervisory effort must be focused on the greatest risks.” However, she noted that “the financial services landscape is changing rapidly and extent of risk is evolving. For us to continue to deliver effectively on our mandate, both today – and tomorrow – our supervision will need to change,” she said, adding that the Central Bank will need to use “new and enhanced tools and approaches” to continue to supervise effectively.

(d) *Irish Funds UK Symposium*

On 24 November 2022, the Central Bank published a [speech](#) delivered by Derville Rowland, Deputy Governor, Consumer and Investor Protection at the Annual Irish Funds UK Symposium last week entitled “Breaking new ground: regulating for emerging risks”. The speech focused on key topics including the Central Bank’s strategy and regulatory philosophy, the concept of open strategic autonomy, macroprudential policy, property fund measures, delegation, environmental, social and governance (ESG) investment and digital assets. The speech also emphasised the continuing engagement between the regulator and the funds and asset management industry.

UK-EU regulatory alignment was a core theme of the symposium. From a regulatory perspective, the speech noted it is important for the EU and UK to continue working closely together to ensure – to the maximum extent possible - the consistent and stable application of the respective regulatory frameworks.

In relation to the Central Bank’s announcement on property fund measures (outlined at section 3.3 of this report), the speech noted that these are the Central Bank’s first macroprudential policy tools for nonbanks. The Central Bank views these measures as a priority supervisory focus. The speech notes that the Central Bank are working with international counterparts to develop and implement a macroprudential policy framework for the sector more broadly.

In relation to the AIFMD delegation proposals, the speech noted that the proposals contained in the AIFMD review mark the start of a longer-term process that will take a deeper and more comprehensive look into delegation in Europe. Ms Rowland notes that it is expected that, after a period of evaluation and reflection, further work in this area may be proposed.

In relation to ESG, Ms Rowland notes that the Central Bank considers the SFDR Level II disclosure obligations to be instrumental in terms of the level of information available to investors about the products in which they invest. The Central Bank’s tolerance for any sustainability disclosure amendments to their pre-contractual documents that do not meet the requirements will be low considering the length of time industry has now had to comply with these key regulatory

changes. Referring to the recent Central Bank information note on sustainable products (outlined at section 3.8 of this report) the speech noted it is designed to inform and assist industry in ensuring that investors and the market can have a high degree of trust and confidence in green and sustainable products produced and sold from the jurisdiction.

In relation to digital assets, the speech referred to the collapse of FTX, the collapse of other crypto entities and the general turmoil seen across the sector this year, reignited questions as to whether this is a sector that should – or should not – be regulated. The remarks noted that this rapidly growing sector is increasingly intertwined with the “traditional” or mainstream financial sector; that is highly volatile and susceptible to fraud; and that has relatively high failure rates. She remarked that this asset class has done real harm to retail investors in the last year. The digital assets ecosystem is not a suitable or safe space for retail investors – something about which the Central Bank has been warning for some time.

(e) *EY Funds Forum 'Horizon scanning to protect and innovate*

On 21 December 2022, the Central Bank [published](#) the transcript of Derville Rowland’s Q&A interview at EY Funds Business Breakfast. The remarks focused on the changing risk environment, forthcoming European supervisory initiatives in 2023 and the Central Bank’s support for regulatory convergence at a European level.

(f) *Strategy for supervision of the funds sector speech*

On 26 October 2022, the Central Bank has published a [speech](#) delivered by Darragh Rossi, Head of Funds Supervision Division on 30 September 2022, outlining the pillars of the Central Bank’s strategy for supervision and outlook for the funds sector (namely transforming, open and engaged, future focused and underlying each of these themes is the concept of safeguarding).

The speech also highlighted the rapid growth and structural changes in the Irish funds industry over the last number of years. It referenced the growth and concentration risk within a small number of management companies as a result of the move away from the self-managed fund structure and the growth of the extent to which fund management companies are providing MiFID services such as individual portfolio management.

As a result of this growth the Central Bank is evolving its approach to supervising the funds sector, including:

- greater focus on data lead supervision and use of thematic or sector analysis;
- increased focus on potential systemic risks from funds; and
- an increased emphasis on fund management companies when considering underlying fund risks.

Mr Rossi noted in relation to this third focus that this is not to say that a fund – and its board - will not be subject to on-going enquiry from the Central Bank, instead, its intention is to direct greater attention towards management companies and through those interactions supervise the underlying funds more effectively.

The speech also highlighted the intended future engagement around enhancements to the authorisation process - initially this will focus on authorisation process for UCITS and Retail Investor AIF and later the Central Bank intends to engage around the approach to Qualified Investor AIFs.

Mr Rossi also shared key risks and areas of focus for the Funds Division over the next 12-18 months, namely:

- the geopolitical and economic environment;



- sustainable finance; and
- digitalisation (referencing Irish Funds recently published Crypto Assets white paper in terms of changes to the assets in which funds invest and in terms of how funds and fund service providers use technology in the provision of investment products).

(g) *Climate Finance Speech*

On 18 October 2022, the Central Bank published a [speech](#) given by Sharon Donnery, Deputy Governor, Central Bank of Ireland and Member of the Supervisory Board of the ECB, at Climate Finance Week 2022 entitled "*No time to wait: Addressing Climate Risk in the Financial System today*". The central theme of Climate Finance Week, "*Investing in a Climate Resilient Future NOW*", speaks to this urgency and the need for actions today to tackle the challenges and avail of opportunities presented by climate change. The address by Ms Donnery focused on understanding and managing the issue of climate risks in the financial sector and the ongoing work by the Central Bank and others on this topic.

Some key takeaways include:

- While most of the progress at international level has or will find its way into the regulatory rulebook at EU level, she notes that we cannot wait for all debates to be resolved, for all gaps to be filled and for all solutions to be available. We must take action now to understand and manage our own positions with respect to climate change.
- Ms Donnery acknowledged that gaps remain in the toolkit to measure and disclose climate related risks in the financial sector and to advance supervision and regulation activities, including a lack of data to adequately measure climate-related risks and a lack of common standards to define risks and disclosures. In this respect, the creation of the International Sustainability Standards Board (ISSB) is a welcome development that will see a global baseline of sustainability-related disclosure standards emerge. Similarly, the Central Bank supports the work of the Central Banks and Supervisors Network for Greening the Financial System (NGFS) in developing climate risk scenarios to provide a common starting point for analysing climate risks to the economy and financial system.
- The Central Bank wrote last November to all regulated financial service providers setting out its broad expectations on climate matters, including climate risk management. In essence, the message was simple - all regulated institutions must consider how climate change impacts upon business models and operations and put in place the necessary internal arrangements to address climate risk from the perspective of governance, staff awareness and training.
- In its [CP151](#) consultation paper on guidance on climate risk management for the insurance sector, the Central Bank sets out how it expects insurers to set up their governance structures, business strategy and risk management processes to manage climate change risks. The issues raised in this consultation can also apply in other sectors – essentially around the need to promote strong governance with respect to climate change risk, and to ensure that the ‘tone from the top’ promotes a culture of responsibility and meaningful action. Furthermore, all firms should understand the materiality of their exposure to climate change risk, taking a broad view of the potential impacts on the sustainability of their business strategy over the short, medium and long term. Equally important is that all firms follow through on their commitments with real and measurable actions and accountability.

(h) *Fund Management Company Effectiveness*

On 6 December 2022, Patricia Dunne, Director of Securities and Markets Supervision, delivered a [speech](#) on the Central Bank's latest work on fund management company effectiveness. The remarks specifically addressed what the latest Central Bank survey results say about the structure of the sector. The purpose of this follow up survey was to assess how the governance, structure and resources in fund management companies had evolved as firms took action to address the findings communicated in the [2020 industry letter](#). The Central Bank's latest Dear CEO Letter relating to this follow up survey is summarised in this report at section 3.2.

The speech also briefly touched on compliance with the disclosure requirements under the Sustainable Finance Disclosure Regulation (EU) 2019/2088 ("**SFDR**"). In relation to Brexit and the future for the sector, the speech notes the EU-UK dynamic brings new challenges, particularly that of regulatory divergence. In this context, given the post Brexit environment it was noted there is an intense spotlight on activities with linkages to third countries – particularly, in light of the targeted changes to the current AIFMD regime to enhance the reporting of delegation activity, for example, where an EU firm or fund delegates or outsources activity outside of the European Union.

As outlined in our previous updates and as highlighted by the Central Bank in the speech to industry, summarised at section 3.5(d), at a European level whilst the proposals are still to be finalised, the AIFMD review is likely to bring targeted changes to the current regime to enhance the reporting of delegation activity, particularly to third countries. Linked to this more comprehensive look into delegation in Europe, focus on supervisory convergence will have a significant part to play in this process, with continued emphasis on delegation and outsourcing. In particular, Ms Dunne concluded by noting that ESMA is expected to carry out a peer review in this area in 2024.

### 3.6 Governor's Blog

The Central Bank governor published his eighth blog post of 2022 on 9 November 2022 entitled "[Non-banks: Learning from experience](#)". In his post, the Governor addresses the vulnerabilities of the non-bank financial sector, in particular as evidenced by the recent UK gilts crisis and its impact on liability driven investment ("**LDI**") funds.

### 3.7 Industry letter on LDI funds

On 30 November 2022, the Central Bank issued its twelfth markets update of 2022 containing an [industry communication](#) from Darragh Rossi, Head of the Central Bank's Securities Markets and Funds Supervision Division to managers of LDI funds denominated in sterling.

The communication following discussions between the Central Bank, the CSSF and with ESMA in the wake of volatility in yields associated with UK gilts and outlines measures to be taken in the management of LDI vehicles. According to the letter, fund managers seeking to reduce yield buffers of LDI funds denominated in sterling below the current levels must inform the Central Bank in advance and provide a justification for the reduction. Other specified actions include completing and documenting a risk assessment with relevant modelling of how the proposed reduction in the LDI fund's resilience will not impact the orderly functioning of the LDI fund in the current and in stressed environments. Clear policies and procedures must be established to increase resilience of LDI funds should there be further volatility in the market.

On 30 November 2022, following the Central Bank's communication ESMA released [a statement](#) welcoming the initiative of the Central Bank in relation to LDI funds.

On 19 December 2022, the Central Bank published the transcript of Governor Makhoul's recent [interview](#) with the Sunday Independent. It contains commentary on the regulatory response to the LDI crisis, the governor's views on systemic risks created by the funds industry and a need to create a global macroprudential framework that operates for non-banks.

### 3.8 Information Note on Sustainable Products *(This is a further update to section 2.1 of the report covering October 2022)*

On 14 November 2022, the Central Bank published an [Industry Communication](#) entitled “Sustainable finance and the asset management sector: Disclosures, investment processes & risk management”.

This paper sets out the findings of the Central Bank’s gatekeeper review of investment fund disclosures (taking into account the requirements of SFDR and the Taxonomy Regulation (EU) 2020/852). It highlights the Central Bank’s expectations around the implementation of the SFDR Level II and the Taxonomy Regulation and provides a roadmap for how the Central Bank will supervise these requirements in the future. The paper also outlines areas of good practice identified.

The aim of publishing this paper is to assist market participants by informing them of the main disclosure issues encountered and outline risks that the Central Bank has observed in terms of potential greenwashing or areas where there has been a lack of transparency or clarity. A key expectation is that fund managers must continuously review fund documentation to ensure disclosure remains specific to the fund and that all SFDR and related requirements are complied with.

#### *Supervisory Roadmap*

In addition to disclosure related matters, the Central Bank outlines a non-exhaustive list of areas of interest, which may form part of a supervisory roadmap into the future, including:

- Adaption of Risk Management Frameworks;
- Article 8 ‘Guardrails’;
- Marketing Materials;
- Fees & Costs;
- Securities Lending; and
- Fund Service Providers.

These areas of interest are in addition to other initiatives planned, including the ESMA Common Supervisory Action on sustainability risks and disclosures, which is planned for 2023.

Please also refer to our recent [advisory](#) on the publication of this industry communication.

#### 3.9 Process clarifications for UCITS and AIFs pre-contractual documentation updates for SFDR Level II measures. *(This is a further update to section 4.10(b) of the report covering the third quarter of 2022)*

On 4 October 2022, the Central Bank published an [industry communication](#) detailing its process clarifications for UCITS and AIFs pre-contractual documentation updates in relation to [Commission Delegated Regulation \(EU\) 2022/1288](#) of 6 April 2022 (“**SFDR Level II**”) ahead of the implementation of the SFDR Level II requirements applying from 1 January 2023 (the “**SFDR Level II Deadline**”)

An attestation provided by the Responsible Person along with the relevant revised final dated documents (prospectus/supplement) for UCITS and AIFs were required to be submitted to the dedicated mailbox [SFDR@centralbank.ie](mailto:SFDR@centralbank.ie) by close of business on the relevant date for automated noting by the Central Bank. A filing deadline of 1 December 2022 was imposed to ensure compliance (noting of the Central Bank) by the SFDR Level II Deadline.

Our recent advisory [Updates on SFDR Level II](#) provides an overview of these updates, setting out the parameters of the Central Bank’s streamlined filing process alongside recent European developments in respect of the SFDR Level II.

### 3.10 Central Bank markets updates

#### (a) Issue 8

On 5 October 2022, the Central Bank published its eighth markets [update](#) of 2022. The policy items of relevance are covered separately in this report and in the report covering the third quarter of 2022.

In addition to the updates from the Central Bank covered separately in this report, there is one further update relating to the application of the European Single Electronic Format Regulation (the "**ESEF Regulation**"). On 5 October 2022, the Central Bank [confirmed](#) the permissibility of incorporating by reference annual financial reports prepared in accordance with ESEF Regulation in a prospectus, which is relevant to issuers, which have securities admitted to trading on an EU regulated market.

#### (b) Issue 9

On 1 November 2022, the Central Bank published its ninth markets [update](#) of 2022. The policy items of relevance are covered separately in the report covering October 2022.

#### (c) Issue 10

On 14 November 2022, the Central Bank published its tenth markets [update](#) of 2022. The only item in this update is the industry communication 'Sustainable finance and the asset management sector: Disclosures, investment processes & risk management' covered in section 3.8 of this report.

#### (d) Issue 11

On 28 November 2022, the Central Bank updated its eleventh markets [update](#) of 2022. The policy items of relevance are covered separately in this report. In addition, the Central Bank has also published an updated Crowdfunding Q&A.

#### (e) Issue 12

On 30 November 2022, the Central Bank updated its twelfth markets [update](#) of 2022. The sole policy item in the update is the Central Bank industry letter on LDI funds, covered at section 3.7 of this report.

#### (f) Issue 13

On 7 December 2022, the Central Bank has published its latest markets [update](#) of 2022 (Issue 13). The policy items of relevance are covered separately in this report.

- Central Bank updates the pre-submission process for QIAIFs proposing to invest in Irish property assets;
- CBI consultation on own funds requirements for UCITS management companies and AIFMs authorised to provide discretionary portfolio management services;
- Dear Chair Letter - Follow up on thematic review of fund management companies' governance, management and effectiveness;
- ESMA issues advice on proposals for leverage limits on real estate funds in Ireland;
- ESMA welcomes NCAs' work to maintain resilience of LDI funds;
- ESMA updates guidelines on stress tests for money market fund.

#### (g) Issue 14

On 21 December 2022, the Central Bank published its latest markets [update](#) of 2022 (Issue 14). The policy items of relevance are covered separately in this report.

- Central Bank of Ireland publishes 37th Edition of the UCITS Q&A;
- Central Bank publishes the 46th Edition of the Central Bank AIFMD Q&A Document;
- ESMA publishes guidelines and technical documentation on reporting under EMIR Refit;
- ESMA publishes its assessment of the Brexit relocation processes.

In addition, the Central Bank confirmed that it will apply the measures outlined in ESMA's [statement](#) that from 1 March 2023 until the forthcoming legislative amendment to Article 27(3) of MiFID applies, ESMA expects national competent authorities not to prioritise supervisory actions towards execution venues relating to the periodic reporting obligation to publish RTS 27 reports.

### 3.11 Enforcement Action on closet-indexing (*This is a further update to section 2 of the report covering the second quarter of 2019*)

On 16 November 2022, the Central Bank published a [public statement](#) relating to its enforcement action against a UCITS management company which was fined €117,600 and reprimanded by the Central Bank for six breaches of applicable UCITS regulations.

As part of its themed review into potential closet indexing, the Central Bank investigation identified five sub-funds in respect of which the investment strategy was to follow or track an index; however, this information was not set out in the investment policy or strategy outlined in the relevant prospectuses and KIIDs. This resulted in the firm's failure to comply with the disclosure requirements in the UCITS regulations for the relevant funds.

The enforcement action highlights the importance of the accuracy and effectiveness of disclosures to fund investors. Disclosures must enable investors make an informed judgement of the relevant investment, (and, in particular, of the risks attached).

Please refer to our recent [advisory](#) on the enforcement action and our July 2019 [advisory](#), which had outlined the findings of the Central Bank's themed review of closet indexing.

### 3.12 Dear CEO letter on treatment of customers

On 19 November 2022, the Central Bank issued a [press release](#) following its [Dear CEO letter](#) (dated 17 November 2022) to all regulated firms where it reaffirms its expectations on how they treat consumers, in the context of the current economic environment.

The 'Dear CEO' Letter details the specific actions, following the [Consumer Protection Outlook Report](#), which firms are, required to address to manage potential risks arising from this changing landscape for consumers. Firms are required to take action and consider the risks to consumers as a result of the [more challenging economic outlook](#), energy-driven inflation, rising interest rates and significantly higher consumer prices and business costs.

The Central Bank states that the impact that inflation may have on the performance/value of an investment, as well as the impact on nominal returns, should be clearly explained. For products that include a guarantee or capital protection, it should be clearly outlined that this would not protect against the effect of inflation over time. Additionally, advice on savings and investments needs to consider both the short and long term needs of the consumer. This should factor in an anticipated increase in the day-to-day costs consumers may face as well as costs consumers may not anticipate.



Firms should ensure they have robust product governance and oversight arrangements in place to proactively assess the risks and consumer impacts commercial decisions may pose to new and existing customers, and develop action plans to mitigate these risks.

The Central Bank expectations are set out in full in the appendix to the letter (categorised according to 'Affordability and sustainability', 'Provision of relevant, clear and timely information', 'effective operational capacity', and 'sales and product governance'). These expectations should be incorporated into the regulated firm's work programme and senior management and board considerations, as applicable to the financial services each firm provides.

### 3.13 Financial Stability Note

On 24 November 2020, the Central Bank published a [financial stability note](#) entitled "Identifying and assessing systemic risks in Ireland: a review of the Central Bank's toolkit". This note describes the Central Bank of Ireland's overall approach and toolkit for assessing systemic risks in Ireland and looks ahead to a number of areas where further development of the systemic risk assessment framework is anticipated.

### 3.14 Funding strategy guide to the 2022 Industry Funding Regulations

On 5 October 2022, the Central Bank published its [Funding Strategy and Guide to the 2022 Industry Funding Regulations](#).

All investment funds authorised by the Central Bank will be liable to pay a minimum levy of €7,165. Umbrella funds will also pay a contribution per sub-fund of €475 up to a maximum of twenty sub-funds, resulting in a maximum contribution for umbrella funds of €16,665.

All Investment fund service providers, which have been authorised by the Central Bank, are liable to pay the levy contribution corresponding to their respective impact categorisation (high, medium high, medium low and low). UCITS managers and alternative investment fund managers authorised in another EEA state, which have established a branch in Ireland will also pay a flat rate levy of €20,951.

### 3.15 Updated reporting requirements in respect of Irish money market funds

On 17 October 2022, the Central Bank published an updated version (Vol 10.0) of its [guidance note](#) on the reporting requirements for fund management companies of Irish Authorised Money Market Investment Funds ("**MMF**") under the Money Market Fund Regulation.

The sole update relates to the Daily MMF Report, an ad-hoc ONR return, whereby the ONR user schedules each daily return (in a similar manner to a Regulatory Report – Fund return). The guidance note states the ONR user must adhere to standard Central Bank protocols and procedures around the submission of Ad-Hoc returns. The reporting date of the Daily MMF Report return is the date to which the data represents i.e. as of close of the previous business day for the MMF. The Submission Due Date is the following business day (T+1). The submission deadline for the Daily MMF Report is 2pm (Irish Time) on that following business day.

## 4. OTHER LEGAL AND REGULATORY DEVELOPMENTS

### 4.1 European Commission (the "**Commission**")

#### (a) *European Commission Work Programme for 2023*

On 18 October, the European Commission published a [communication](#) outlining its adopted work programme for 2023. Alongside the communication, the Commission has published the annexes to the 2023 work programme and two factsheets. The annexes include Annex I, which sets out new policy and legislative initiatives, and Annex II, which sets out Refit initiatives, under which the Commission

intends to simplify existing legislation. The first factsheet briefly outlines the 2023 work programme's [timeline and structure](#). The second factsheet summarises Annex I to the 2023 [work programme](#).

Priority pending proposals

Annex III sets out priority pending proposals in 116 areas in relation to which the Commission wants the Parliament and the Council to take swift action. These include the following proposals of interest.

- Proposal for a Directive amending the Alternative Investment Fund Managers Directive (2011/61/EU) (AIFMD) and UCITS Directive (2009/65/EC) as regards delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services and loan origination by alternative investment fund.
- Proposal for a Directive amending the Solvency II Directive (2009/138/EC).
- Proposals to strengthen the EU's anti-money laundering (AML) and counter-terrorist financing (CTF) rules.
- Proposal for a Regulation amending the Central Securities Depositories Regulation (909/2014) (CSDR Refit (see 4.4 above)).
- Proposal for a Regulation amending the Market in Financial Instruments Regulation (600/2014) (MiFIR) as regards enhancing market data transparency, removing obstacles to the emergence of a consolidated tape, optimising the trading obligations and prohibiting receiving payments for forwarding client orders and a proposal for a Directive amending the MiFID II Directive (2014/65/EU).
- Proposals for a Regulation to establish a European single access point (ESAP) providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability; and
- Proposal for a Regulation amending the Regulation on ELTIFs (see 3.3 above) as regards the scope of eligible assets and investments, the portfolio composition and diversification requirements, the borrowing of cash and other fund rules and as regards requirements pertaining to the authorisation, investment policies and operating conditions of ELTIFs.

Now the Commission has adopted its 2023 work programme, it will present it in the European Parliament and to the other institutional partners. On the basis of the 2023 work programme, the Commission, the Parliament and the Council will establish a joint declaration on the EU's legislative priorities, committing to take swift action.

*(b) European Commission Report on functioning of the Securitisation Regulation*

On 10 October 2022, the Commission published its [Report](#) on the functioning of the Securitisation Regulation (EU) 2017/2402.

The Commission clarified in this report that non-EU AIFMs marketing and managing funds in the EU must also comply with the due diligence requirements pursuant to Article 5 the Securitisation Regulation. In addition, the Commission clarified that sub-threshold AIFMs should also be considered institutional investors and are required to comply with those requirements.

The Commission also confirmed it agrees with the view of the European Banking that, in the short and medium term, there is no case for creating a dedicated sustainability label for securitisations. The Commission invites the European Parliament and Council to take the European Banking Authority

("EBA") [Report](#) on Sustainable Securitisation into account in their ongoing negotiations of the EU Green Bond Standard (the "EuGBS"), so that the EuGBS is suitable for use by securitisations.

The Commission notes that the Securitisation Regulation seems overall to be fit for purpose and does not see the need for major legislative change at this juncture. The Commission also takes note of the concerns expressed by stakeholders and acknowledges that there is room for fine-tuning on certain aspects in a future proposal to amend the Securitisation Regulation.

(c) *Data Protection EU/U.S. Data Privacy Framework*

On 7 October 2022, President Biden signed an Executive Order that implements into US law the agreement in principle on a new EU/U.S. Data Privacy Framework.

Following the adoption of this executive order the European Commission has published a [Commission Q&A](#) on the 'EU/U.S. Data Privacy Framework'.

The European Commission can now move to the next steps in implementation, which include preparing a draft EU-US adequacy decision, as well as launching its adoption procedure.

On 13 December 2022, the European Commission [launched](#) the decision process and a [Q&A document](#) towards the adoption of an adequacy decision for the EU-U.S. Data Privacy Framework, which will foster safe trans-Atlantic data flows and address the concerns raised by the ECJ in the Schrems II case.

The draft adequacy decision will now proceed through the formal adoption procedures.

(d) *Capital Markets Union: Legislative proposals for Regulation and Directive on EU clearing systems*

On 7 December 2022, the European Commission adopted a [legislative proposal](#) for a Regulation containing extensive amendments to the EMIR Regulation (648/2012) ("EMIR") intended to mitigate excessive exposures to third-country central counterparties ("CCPs") and improve the efficiency of EU clearing markets. The Commission refers to the proposed Regulation as "EMIR 3" or the "EMIR Review Regulation".

The aim of the proposed Regulation is to reduce dependency of EU financial markets on some services provided by certain third-country CCPs, particularly those located in the UK and to make the central clearing of derivatives in the EU more attractive and resilient. The amendments to EMIR are intended to:

- Encourage clearing in the EU and improve the attractiveness of EU CCPs by simplifying the procedures for CCPs when launching new products and changing risk models.
- Make EU CCPs more resilient and to draw the lessons from recent developments in energy markets.
- Strengthen EU open strategic autonomy and safeguard financial stability, including by increasing the transparency of margin calls.

The proposal will require all relevant market participants to hold active accounts at EU CCPs for clearing at least a portion of certain systemic derivative contracts.

The Commission has also adopted a [legislative proposal](#) for a Directive making targeted related amendments to existing EU directives that complement the revisions to EMIR set out in the proposed Regulation namely in the UCITS Directive (2009/65/EC), the CRD IV Directive (2013/36/EU) and the Investment Firms Directive ((EU) 2019/2034).

The Commission intends for the Regulation to enter into force on the 20th day following its publication in the Official Journal and for member states to bring into force legislation and regulation implementing these amendments 12 months after the date of the entry into force of the proposed Regulation.

The Commission has also published a [communication](#) on a path towards a stronger EU clearing system that provides an overview of the key actions taken by the reforms and details of other initiatives taken by the Commission concerning clearing.

(e) *Capital Markets Union: Package of legislative proposals on corporate insolvency and company listing*

On 7 December 2022, the European Commission published a [package of proposals](#) in connection with its commitment in Action 2 of the 2020 Capital Markets Union Action Plan, to simplify EU listing rules (the Listing Act package).

The package includes:

- A proposal for a regulation to amend the EU Prospectus Regulation, the EU Market Abuse Regulation and EU MiFIR. The proposed regulation seeks to reduce regulatory and compliance costs for listed companies and those seeking to list.
- A proposal for a directive to amend MiFID II and repeal Directive 2001/34/EC (on the admission of securities to official stock exchange listing and on information to be published on those securities). The objective of the proposal is to enhance the visibility of listed companies, especially small and medium enterprises ("**SMEs**"), by amendments to MiFID II relating to investment research. By transferring relevant provisions of Directive 2001/34/EC to MiFID II, it also seeks to streamline the listing process
- A proposal for a new directive permitting multiple-vote share structures in companies seeking admission of their shares to trading on an SME growth market.

The respective legislative proposals will now be submitted to the European Parliament and the Council for adoption.

(f) *Supranational AML/CFT risk assessment*

On 28 October 2022, the Commission published a [report](#) to the European Parliament and the Council together with a [staff working document](#) on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities. This supranational risk assessment, issued under the Fourth Money Laundering Directive ((EU) 2015/849) ("**4AMLD**"), as amended by 5AMLD, maps risks in all relevant areas, together with remediation recommendations. The Commission proposes restrictions on large cash payments in its proposal for a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

(g) *Commissioner McGuinness speech at EFAMA Investment Management Forum*

On 17 November 2022, the Commission published the keynote [speech](#) delivered by Commissioner McGuinness at the European Fund and Asset Management Association (EFAMA) Investment Management Forum. The speech focused on the Commission's commitment to develop the Capital Markets Union and key areas of focus for the Commissioner including the following.

- the revision of the European Long-Term Investment Fund regulation and the proposed innovation seen in the European single access point;

- review of the Alternative Investment Fund Managers Directive, including harmonising rules on loan-originating funds;
- proposed a review of the Central Securities Depositories Regulation to make the settlement discipline regime more effective and proportionate;
- the review of MiFIR, which aims to put in place a consolidated tape for trading data;
- the main goals of the Retail Investment Strategy expected in early 2023:
  - information and disclosures;
  - issue of financial literacy;
  - the impact of technology – in particular the risks of online marketing and its potential to mislead;
  - the rules on suitability and appropriateness;
- excessive costs and fees for products;
- the payment of inducements to distributors by manufacturers; and
- ensure the usability of the sustainability instruments, the new Taxonomy, corporate discourses, and financial regulation disclosures.

(h) *EBA final report on remote customer onboarding guidelines*

On 22 November 2022, the EBA published its [final report](#) on guidelines on the use of remote customer onboarding solutions under Article 13(1) of the 4AMLD.

The guidelines will be translated into the official EU languages. These versions will be published on the EBA website. The deadline for national competent authorities to report whether they comply with the guidelines will be two months after publication of the translations. The guidelines will enter into force six months after publication of the translations.

Please read our recent [advisory](#), which outlines key aspects of the guidelines for credit and financial institutions.

(i) *Industry Associations' joint letter on the importance of advice (This is a further update to section 4.5 of the report covering the third quarter of 2022)*

On 16 December 2022, in light of the possible inclusion of an EU-wide ban on commission-based advice in the proposed Retail Investment Strategy by the Commission, a number of industry associations including EFAMA, and Insurance Europe stressed the importance of retaining the coexistence of the fee-and commission-based models in a [joint letter](#) addressed to Vice-President Dombrovskis, Commissioner McGuinness and Director-General Berrigan.

The joint letter outlines that an EU-wide ban on commission-based advice would restrict EU consumers' access to investment advice and would be inconsistent with several capital market union objectives, including guaranteeing that retail investors can reap the full benefits of capital markets and advancing financial inclusion.

The Retail Investment Strategy, which is one of the actions planned under the Capital Markets Union's Action Plan, is targeted for publication by the Commission in early 2023.



(j) Gender Balance Directive adopted by EU Parliament

On 22 November 2022, the directive on improving the gender balance among directors of listed companies and related measures (the "**Directive**") will impose quantitative targets on gender representation on the boards of EU listed companies was [adopted](#) by the EU Parliament.

Following its entry into force member states will then have two years to transpose its provisions into national law.

4.2 Companies (Miscellaneous Provisions) (Covid-19) Act 2020 - extension of certain measures of Companies Act

The government has [announced](#) the extension of the interim period for certain measures in the Companies (Miscellaneous Provisions) (Covid-19) Act 2020 (the "**Act**") from 31 December 2022 to 31 December 2023.

The temporary measures contained in the [Act](#) amended the Companies Act to address both operational issues arising under the Act, along with insolvency measures considered necessary to alleviate pressure on company liquidity with a view to protecting viable businesses and preserving employment. The interim period of the Act has now been further extended to 31 December 2023 in respect of the following measures:

- increased financial threshold for initiating a winding up from €10,000 for a single creditor and €20,000 for two or more creditors, to €50,000 in respect of each; and
- providing companies with the ability to hold general and creditor meetings virtually.

The interim period for the following measures will not be extended:

- Section 43A of the Companies Act 2014, which allows documents which are required to be executed under seal to be executed in counterpart, so that the seal and the signatures of the authorised signatories can be on separate pages. Accordingly, deeds will still be able to be executed in counterpart in the usual way.
- The extension of the time period within which an examiner is required to report to the court under Section 534 of the Companies Act from 100 days to a total of 150 days, subject to court approval.

4.3 Crypto-Asset Regulation

(a) *Agreed text on proposed Regulation on markets in crypto-assets ("**MiCA**") (This is a further update to section 4.8(d) of the report covering the fourth quarter of 2021)*

On 5 October 2022, the Council of the EU approved an information note attaching a letter sent to the Chair of the European Parliament Economic and Monetary Affairs Committee (ECON) relating to the [proposed Regulation](#) on MiCA.

In the letter, the Council states that following informal negotiations between the Council, the Parliament and the European Commission, a draft overall compromise package has been agreed by the Council's Permanent Representative Committee (COREPER).

The Council confirms that if the Parliament adopts its position at first reading in the form set out in the Annex to the letter, the Council will approve the Parliament's position and adopt the act in wording corresponding to the Parliament's position.

It is expected that the Regulation on MiCA will be published officially in 2023, with a wide range of transitional arrangements and dependencies on regulatory technical standards under development by various EU regulatory agencies.

*(b) FSB framework for the international regulation of crypto-assets*

On 11 October 2022, the Financial Stability Board ("FSB") published a [proposed framework for the international regulation of crypto-asset activities](#). The core components of this framework are proposals as follows:

- [recommendations](#) that promote the consistency and comprehensiveness of regulatory, supervisory and oversight approaches to crypto-asset activities and markets and strengthen international cooperation, coordination and information sharing; and
- [revised high-level recommendations](#) for the regulation, supervision, and oversight of "global stable coin" arrangements to address associated financial stability risks more effectively.

The FSB is inviting comments on its proposed set of recommendations and questions issued for public consultation by 15 December 2022.

4.4 Central Securities Depositories Regulation 909/2014 ("**CSDR**") (*This is a further update to section 3.6 of the report covering the second quarter of 2022*)

*(a) CSDR Refit Regulation*

On 14 October 2022, the European Parliament's Economic and Monetary Affairs Committee (ECON) published a [draft report](#) on the European Commission's legislative proposal for a Regulation amending the CSDR (CSDR Refit) (CON/2022/25). The report contains a draft European Parliament legislative resolution, the text of which sets out suggested amendments to the proposed Regulation.

The explanatory statement to the report sets out details of the amendments proposed on issues including discarding the CSDR mandatory buy-ins regime completely and instead reintroducing into the Short Selling Regulation the central counterparty ("**CCP**") buy-in provisions against naked short-selling that already existed before the CSDR was implemented.

On 20 October 2022, ESMA published an updated version of its [Q&As](#) on the implementation of the Central Securities Depositories Regulation. ESMA has added new Q&As relating to the calculation, scope, and costs and processes of cash penalties in the settlement discipline section of the document.

*(b) Report on amendments to settlement discipline under CSDR*

On 21 November 2022, ESMA published a [final report](#) on amendments to Article 19 of the RTS on settlement discipline set out in Commission Delegated Regulation 2018/1229, which supplements the CSDR. Article 19 provides for a specific collection and distribution process for cash penalties to be carried out by central counterparties, which can directly collect and distribute penalties for all transactions.

The draft amending RTS would remove this special collection and distribution process that applies to CCPs and tasks instead the central securities depositories with the entire process of directly collecting and distributing penalties. ESMA proposes to defer the application of the amendment by twelve months.

4.5 EMIR

*(a) Publication in Official Journal of Commission Delegated Regulations amending EMIR RTS*

On 28 November 2022, two Commission Delegated Regulations amending regulatory technical standards ("RTS") laid down in existing delegated regulations made under EMIR have been published in the OJ.

- Commission Delegated Regulation (EU) [2022/2310](#) of 18 October 2022 amends Delegated Regulation (EU) No 149/2013 by increasing the clearing threshold value for positions held in OTC commodity derivatives from €3bn to €4bn.
- Commission Delegated Regulation [2022/2311](#) of 21 October 2022 amends Commission Delegated Regulation (EU) 153/2013 by temporarily expanding the pool of eligible collateral available to non-financial clearing members to include public guarantees and uncollateralised bank guarantees (subject to certain conditions). The measures are granted for 12 months and depending on how the situation in the energy derivative markets develops; the Commission is ready to request ESMA to consider an extension of the temporary measures. On 14 October 2022, ESMA published an accompanying [Q&A](#) clarifying the eligibility of bonds and commercial paper as collateral for CCPs.

These Commission Delegated Regulations came into force the day after their publication in the OJ i.e. 29 November 2022.

- (b) *Guidelines and technical documentation on reporting and data management under EMIR Refit (This is a further update to section 4.9(b) of the report covering the fourth quarter of 2020)*

On 14 December 2022, ESMA published its [final report](#) on guidelines on reporting under EMIR Refit (the "**Guidelines**"). The Guidelines seek to clarify the legal provisions on reporting and data management under the amended EMIR, providing practical guidance on their implementation.

The Guidelines are designed to further enhance the harmonisation and standardisation of reporting under EMIR contributing to the high quality of data necessary for the effective monitoring of the systemic risk. Furthermore, increased harmonisation and standardisation of reporting allows to contain the costs along the complete reporting chain - the counterparties that report the data, the trade repositories ("**TRs**") which put in place the procedures to verify the completeness and correctness of data, and the authorities, defined in Article 81(3) of EMIR, which use data for supervisory and regulatory purposes. The Guidelines provide clarifications on the following aspects:

- transition to reporting under the new rules;
- the number of reportable derivatives;
- intragroup derivatives exemption from reporting;
- delegation of reporting and allocation of responsibility for reporting;
- reporting logic and the population of reporting fields;
- reporting of different types of derivatives;
- ensuring data quality by the counterparties and the TRs;
- construction of the trade state report and reconciliation of derivatives by the TRs; and
- data access.

The final report contains a detailed assessment of the feedback received to the proposals in the consultation paper published in July 2021. ESMA will continue to engage with the market participants with a view to clarifying any remaining doubts and to facilitate a smooth transition to reporting under EMIR REFIT. The Guidelines will be translated and published in all EU languages and will enter into application on 29 April 2024.

(c) *Publication of Level 2 measures*

On 7 October 2022, the following six new Level 2 measures (Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS)) were been published in the OJ:

[Commission Delegated Regulation \(EU\) 2022/1855](#) supplements EMIR with regard to regulatory technical standards (RTS) specifying the minimum details of the data to be reported to trade repositories and the type of reports to be used. It enters into force on 27 October 2022 and applies from 29 April 2024.

[Commission Delegated Regulation \(EU\) 2022/1856](#) amends the RTS laid down in Commission Delegated Regulation (EU) 151/2013 by further specifying the procedure for accessing details of derivatives as well as the technical and operational arrangements for their access. It enters into force on 27 October 2022. Articles 1(4)(c) and (d), which amend Articles 5(6) and (7) of Commission Delegated Regulation (EU) 151/2013, apply from 29 April 2024.

[Commission Delegated Regulation \(EU\) 2022/1857](#) amends the RTS laid down in Commission Delegated Regulation (EU) 150/2013 as regards the details of the applications for registration as a trade repository and for applications for extension of registration as a trade repository. It enters into force on 27 October 2022. Article 1(1), which amends Article 19 of Commission Delegated Regulation (EU) 150/2013, applies from 29 April 2024.

[Commission Delegated Regulation \(EU\) 2022/1858](#) supplements EMIR with regard to RTS specifying the procedures for the reconciliation of data between trade repositories and the procedures to be applied by the trade repository to verify the compliance by the reporting counterparty or submitting entity with the reporting requirements and to verify the completeness and correctness of the data reported. It enters into force on 27 October 2022 and applies from 29 April 2024.

[Commission Implementing Regulation \(EU\) 2022/1859](#) amends the implementing technical standards (ITS) laid down in Commission Implementing Regulation (EU) 1248/2012 as regards the format for applications for registration as trade repositories and for applications for extension of registration as trade repositories. It enters into force on 27 October 2022.

[Commission Implementing Regulation \(EU\) 2022/1860](#) lays down ITS for the application of EU EMIR with regard to the standards, formats, frequency and methods and arrangements for reporting and repeals Commission Implementing Regulation (EU) 1247/2012. It enters into force on 27 October 2022 and applies from 29 April 2024.

(d) *ESMA's recognised third-country central counterparties updates*

On 3 October 2022, ESMA updated its [list of recognised third-country central counterparties](#) ("TC CCPs") to include the Shanghai Clearing House and Dubai Clear.

On 31 October 2022, ESMA published a [press release](#) announcing it is withdrawing the recognition decisions of six Indian TC CCPs in accordance with EMIR. These TC-CCPs will no longer be able to provide services to clearing members and trading venues established in the EU. In order to mitigate the impacts on market participants, ESMA has deferred the application of the withdrawal decisions until 30 April 2023.

(e) *ESMA's memoranda of understanding with regulatory authorities of Chile and China*

On 11 October 2022, ESMA published memorandum of understanding with the regulatory authorities of [Chile](#) and [China](#) respectively, with respect to the recognition of central clearing counterparties as TC CCPs or that are already recognised by ESMA as third-country CCPs (Covered CCPs), pursuant to Article 25 of EMIR.

(f) *Commission adopts extensions for intragroup exemptions*

On 25 October 2022, the European Commission adopted Delegated Regulations relating to the extension until 30 June 2025 of exemptions for intragroup contracts where one counterparty is established in a third country and one counterparty is established in the EU.

The first Commission [Delegated Regulation](#) amending the regulatory technical standards laid down in Delegated Regulation (EU) 2016/2251 provide for the extension of the current time-limited margin exemption for intragroup contracts until 30 June 2025. The second Commission [Delegated Regulation](#) amending the regulatory technical standards laid down in Delegated Regulations (EU) 2015/2205, (EU) 2016/592 and (EU) 2016/1178 defer the equivalent time-limited intragroup clearing exemption until 30 June 2025.

These Commission Delegated Regulations will be subject to non-objection by the European Parliament and the Council and, assuming no objection, will enter into force on the day following their publication in the OJ.

#### 4.6 ESMA

##### (a) *Strategic priorities 2023-2028*

On 10 October 2022, ESMA published its [Strategic Priorities for 2023-2028](#) (the "**Strategy**").

In the Strategy, ESMA details its long-term priorities and how it will use its competences and toolbox to respond to future challenges and developments. ESMA will focus on strengthening supervision, enhancing the protection of retail investors, fostering effective markets and financial stability, enabling sustainable finance, as well as facilitating technological innovation and effective use of data.

Fostering effective markets and financial stability – ESMA actively supports the deepening of European capital markets, ensuring their integrity and making them more effective. To this end, for the next five years, the Authority will focus on ensuring fair, orderly and effective markets, increased transparency (e.g. through implementing the European Single Access Point) as well as enhancing financial stability. ESMA will continue developing, maintaining and streamlining the Single Rulebook and supporting the common EU's voice in the international regulatory and supervisory discussions.

Strengthening supervision of EU financial markets – ESMA's and the national competent authorities' ("**NCAs**") activities are complementary and work to strengthen supervision across the EU single market. In the Strategy, ESMA highlights the ambition to achieve a common EU supervisory culture, risk prioritisation, and the convergence of supervision approaches and outcomes.

Enhancing protection of retail investors – ESMA and the NCAs will do all they can to ensure that investors are effectively protected, with a particular focus on retail investors. In addition, in the Strategy, we put forward actions related to investor engagement and effective information and disclosure.

Enabling sustainable finance – By embedding sustainability in all its activities, ESMA will support the transition to a more sustainable economic and financial system. The priorities from the [Sustainable Finance Roadmap](#) go hand in hand with the paths mentioned in the Strategy, namely: effectiveness and integrity of ESG information, an improved ESG regulatory framework and supervision, and a recognition of the role of retail investors in financing the transition to a greener economy.

Facilitating technological innovation and effective use of data - ESMA will endeavour to ensure that financial regulation does not hinder innovation, while maintaining a level playing field between emerging players and products and ones that are more traditional. ESMA's focus will be on assessing the impact of technologies used in financial markets on the existing regulatory framework and implementation of the upcoming EU legislation in this space.

ESMA will further strengthen its role as data and information hub in the EU and contribute to extending the effective use of data in financial market supervision.



On 13 October 2022, Natasha Cazenave, Executive Director of ESMA delivered a [speech](#) on ESMA's new strategic direction following publication of the Strategy.

*(b) ESMA updates its strategic supervisory priorities to include ESG disclosures*

On 27 October 2022, ESMA published a [press release](#) announced it is updating its Strategic Supervisory Priorities to include ESG disclosures alongside market data quality. ESMA and the NCAs will work together to foster transparency and comprehensibility of ESG disclosures across key segments of the sustainable finance value chain including issuers, investment managers and investment firms, and in doing so, tackle greenwashing.

ESMA and NCAs will continue working together in the areas of ESG disclosures and market data quality. At the same time, ESMA and NCAs will follow-up on the previous work, namely monitoring closely the evolution of costs as a key element for investor protection.

*(c) 2023 Annual Work Programme*

On 10 October 2022, ESMA published its [2023 Annual Work Programme](#) and accompanying [press release](#) (focus on sustainability, technological change and protection of retail investors), which sets out its priority work areas for 2023.

Among other things the programme outlines ESMA's priorities will include:

- Enabling sustainable finance – develop remaining technical standards under the SFDR and work to better understand and fight against greenwashing.
- Facilitating technological innovation and effective use of data – develop technical standards and guidelines in order to help the market prepare for the implementation of key new regulations in the area of digital finance: the Digital Operational Resilience Act (DORA), the Regulation on Markets in Crypto-Assets and the DLT Pilot Regime.
- Investors and issuers – continue to report on the impact of costs and charges for retail investors and coordinate new workstreams on mystery shopping. Coordinate a common supervisory action in the area of sustainability, covering the risk of greenwashing in the fast-growing area of sustainable investment products. ESMA also expects to be mandated to support the regulatory framework for sustainable finance, under the Corporate Sustainable Reporting Directive, the proposed regulation for EU Green Bonds and the SFDR.

Each section of the report highlight its key deliverables. Annex IV to the report sets out a description of each output type, as well as a complete overview of ESMA's 2023 outputs by type.

*(d) ESMA/ACER joint task force on derivatives markets*

On 18 October 2022, ESMA [announced](#) that it is establishing a joint task force with the EU Agency for the Cooperation of Energy Regulators ("ACER") to strengthen their co-operation to further improve information exchange and avoid potential market abuse in the EU's spot and derivative markets.

The press release explains that the current energy crisis highlights the importance of enhanced market surveillance and enforcement in detecting market manipulation and insider trading and ensuring confidence in EU wholesale energy and financial derivatives trading. Areas where ACER and ESMA might co-operate in the future include in the context of the possible new liquefied natural gas (LNG) benchmark currently under consideration by the European Commission, and with an enhanced monitoring of risks in energy markets, helping to preserve financial stability in EU markets.

*(e) ESMA Brexit peer review*

On 8 December 2022, ESMA published a [peer review report](#) into the handling by national competent authorities ("NCAs") of firms' relocation to the EU in the context of Brexit.

ESMA assessed how NCAs met relevant requirements, set out in general principles to support supervisory convergence and clarified in sector-specific opinions, when authorising relocating entities and activities from the UK to the EU. The peer review covers the assessment of three distinct sectors: MiFID firms, trading venues and fund managers. The peer review focused its assessment on NCAs of jurisdictions where most or complex activities were relocated – AFM (The Netherlands) and AMF (France) for fund managers and trading venues, BaFin (Germany) and CySEC (Cyprus) for MiFID firms, CSSF (Luxembourg) for fund managers, and the Central Bank for all three sectors. The key areas of focus were the same for all three sectors, namely entities' governance and substance requirements. In addition, each regulatory framework applies a different approach regarding the content and level of detail of governance and substance requirements.

The peer review targeted different jurisdictions in each of the three sectors, where the most or complex activities were relocated. Key findings in the report included that:

- NCAs allowed, in certain cases, for an extensive use of outsourcing or delegation arrangements;
- several firms relocated with limited technical and human resources in the EU. In particular, NCAs applied different interpretations of proportionality in relation to substance requirements. This led to, on occasion, some smaller firms relocating with only very minimal set-ups.

In the report, ESMA makes recommendations for future work to achieve greater convergence at EU level on the application of the risk-based approach, the proportionality principle and on outsourcing and delegation arrangements. In addition, ESMA encourages NCAs to improve their assessment of the adequacy of the internal control function, the extent of outsourcing and delegation, and the appropriateness of governance arrangements.

In a related [press release](#), ESMA states that it will continue to facilitate and co-ordinate further convergence work at EU level. In addition, it expects work to be conducted at national level to address the report's findings and recommendations. The aim is to learn lessons for the wider authorisation process from the Brexit relocation process.

ESMA intends to carry out a follow-up assessment in two years' time.

*(f) Opinion on Product Intervention Measure on Futures taken by the German Regulator*

On 26 October 2022, ESMA issued an [opinion](#) on a product intervention measure on futures with additional payment obligations taken by the German markets regulator (BaFin).

This opinion is issued in accordance with the provisions of the Market Abuse Regulation.

*(g) Perspective on FTX collapse*

On 30 November 2022, Steffen Kern, Head of Risk Analysis and Chief Economist, ESMA Economic and Monetary Affairs Committee delivered the [Opening Statement](#) at the European Parliament, which provided an ESMA perspective on the FTX collapse and initial considerations of the implications.

The address outlined how the collapse of FTX, a centralised crypto trading platform, is likely to cause major detriment to retail investors, including in the EU, notwithstanding that ESMA was not responsible for either the regulation or supervision of FTX. It notes that from an initial review key regulatory concerns with FTX appear to be a failure to adequately ensure the segregation of client assets, poor corporate governance generally and aggressive marketing.

The statement notes ESMA's previous warnings (and those of national competent authorities across the EU) with respect to the market risk attaching to crypto currency investments. The address noted that the collapse highlights the utmost urgency in the implementation and application of regulation of the area in the EU through the Markets in Crypto Assets Regulation, is a matter of utmost urgency to ensure protection for investors and market participants. Service providers domiciled outside the EU play the dominant role in crypto markets and EU authorities will, therefore need to continue to cooperate closely with counterparts internationally on such matters.

- (h) *Updated guidelines on stress tests for money market funds (This is a further update to section 4.12(b) of the report covering the first quarter of 2022)*

On 21 November 2022, ESMA published the [Final Report](#) on the 2022 update of guidelines on MMF stress tests under the Money Market Funds Regulation.

ESMA [notes](#) that the 2022 update takes into account latest market developments in particular economic uncertainties and risks identified to MMFs, including the recent stress episode on the GBP money market. These guidelines are updated at least every year considering the latest market developments.

The report also reflects the very high risks to ESMA's remit identified in ESMA [Report](#) on Trends, Risks and Vulnerabilities, (outlined in our report covering the third quarter of 2022), which includes risks to MMFs, which experienced a stress episode on the GBP money markets in 2022. In calibrating the new risk parameters ESMA has worked closely with the European Systemic Risk Board and the European Central Bank and the calibration takes into account the systemic risks identified in the [warning](#) issued by the European Systemic Risk Board on vulnerabilities in the Union's financial system.

The 2022 amendments to the guidelines are set out in red in ESMA's final report. The new parameters set out in the updated guidelines apply for the purpose of the first reporting period following the start of the application of the updated guidelines.

- (i) *Report on Amended RTS and Consultation on Benchmark Administrators (This is a further update to section 4.2 of the report covering the third quarter of 2022)*

On 28 November 2022, ESMA published a [final report](#) on the review of the RTS on the form and content of applications for recognition by non-EU benchmark administrators, and a [consultation](#) on amendments to the RTS on the information that EU benchmark administrators need to provide in applications for authorisation and registration.

The draft RTS on recognition have now been sent to the Commission for endorsement in the form of a Delegated Regulation. Following the endorsement by the Commission, the Delegated Regulation will then be subject to the non-objection of the European Parliament and of the Council.

ESMA will consider the responses to its consultation before submitting the draft RTS on authorisation and registration to the Commission for adoption. The closing date for responses to the consultation from stakeholders is 31 January 2023.

- (j) *Report on technical standards for cross-border activities under UCITS and AIFMD (This is a further update to section 3.9(b) of the report covering the second quarter of 2022)*

On 21 December 2022, following its consultation in May 2022, ESMA has published a [final report](#) specifying the information to be provided, and the templates to be used, to inform competent authorities of the cross-border marketing and management of investment funds and the cross-border provision of services by fund managers.

The RTS specify the information to be provided by management companies and AIFMs wishing to carry out their activities in host member states. The ITS contain the templates to be used by management

companies, UCITS and AIFMs to notify their intention to carry out their activities in host member states and specify the procedure for the communication of information between competent authorities as regards these notifications.

ESMA has submitted the proposed RTS and ITS to the European Commission for adoption within three months (with the possibility of a one month extension) respectively in the form of a Commission Delegated Regulation and a Commission Implementing Regulation annexed in the report.

- (k) *Cross-border distribution of funds - Details of national rules governing marketing requirements (This is a further update to section 4.9(n) of the report covering the first quarter of 2022)*

On 7 December 2022 and subsequently on 9 December 2022, ESMA published an updated [list of hyperlinks](#) to the websites of NCAs, where they publish the complete and up to date information on the applicable national laws, regulations and administrative provisions governing marketing requirements for AIFs and UCITS (as well as the summaries thereof and the list of hyperlinks to the webpages where the list of regulatory fees and charges they levy for carrying out their duties in relation to the cross-border activities of fund managers).

- (l) *Spreadsheet of fund management Q&As under development*

On 12 December 2022, ESMA [published](#) a series of new questions under development, which will be of interest to UCITS, AIFs and fund management companies.

The new questions concerning fund management listed for ESMA to develop answers are as follows:

"Article 52(1)(b) of UCITS Directive. Article 52(1)(b) of the UCITS Directive requires a UCITS not to invest more than 20% of its assets in deposits made with the same body. Does the term "body" referred to in the aforementioned article mean "credit institution" as mentioned in Article 50(1)(f) of the UCITS Directive or does it include also any other counterparty which is not a credit institution?"

Leverage. An AIF whose core investment policy is to invest in real estate controls a financial or legal structure that is used to invest in real estate assets. The financial or legal structure raises debt to finance the acquisition of those assets (real estate). When calculating the exposure of the AIF, shall the AIFM include the debt raised at the level of the financial or legal structure?

Guidelines on marketing communications. When a marketing communication contains information on past performance, is it allowed to include information on past performance going beyond the information referred to in paragraph 44 of the Guidelines (e.g., performance of the preceding month)?"

The spreadsheet contains an indicative list of draft questions that ESMA is currently developing into Q&As and expects to finalise and publish in the upcoming months. ESMA notes that the inclusion of a question in this file does not imply a commitment from ESMA to publish a final Q&A on the topic.

- (m) *TRV risk analyses (This is a further update to section 4.4(i) of the report covering the third quarter of 2022)*

During the period, ESMA published a number of risk analysis reports as follows:

- on 19 December 2022, it published a [risk analysis report](#) entitled "A framework to assess Operational Resilience". The report presents new approaches to assess operational resilience for financial entities providing time-critical services. The tools are intended to provide the means for supervisors to measure and test different aspects of financial entities' operational resilience in a standardised and comparable manner and can be adapted to different types of financial institutions for which continuous operations is expected.

- on 21 December 2022, it published a [risk analysis report](#) entitled "EU Ecolabel: Calibrating green criteria for retail funds" which assesses an EU-wide label for retail financial products awarded to green products and services.

#### 4.7 ELTIF Regulation (*This is a further update to section 4.8(a) of the report covering the fourth quarter of 2021*)

##### (a) *Political agreement reached on proposed amendments to ELTIF Regulation*

On 19 October 2022, the Council of the EU published a [press release](#) announcing that it has reached provisional political agreement with the European Parliament on the proposed Regulation containing amendments to the Regulation on European long-term investment funds ("**ELTIFs**") ((EU) 2015/760) (the "**ELTIF Regulation**"). The aim of the amendments is to make ELTIFs more attractive and easier to invest in. In the press release, the Council highlights that one of its key priorities is now reflected in the text, that is, a redesign of the ELTIF framework to allow more financing to be channelled to SMEs and long-term projects to help achieve the digital transition.

Also highlighted in the press release is that the Council and the Parliament have clarified the scope of eligible assets and investments, the portfolio composition and diversification requirements, the conditions for borrowing and lending of cash and other fund rules, including sustainability aspects. The proposed amendments to the ELTIF Regulation enable, among other reforms, more diverse investment opportunities, the creation of fund of fund structures and the removal of the minimum investment amounts for retail investors. In addition, the amendments include rules to make it easier for retail investors to invest in ELTIFs while ensuring strong investor protection.

The key changes to the ELTIF regime in the proposed Regulation include:

- establishing an optional liquidity window mechanism for redemptions, where investors need to exit early;
- differentiating between ELTIF's marketed to professional investors and retail investors;
- removing barriers to retail investor access; and
- carrying out suitability assessments in line with MiFID II provisions thereby removing the duplication of suitability tests and collection of information on retail investors' knowledge, experience, financial situation and objectives provided for in the existing ELTIF regime.

ELTIFs allow retail investors the opportunity to invest in companies and projects that need long-term capital within an EU passportable product that incorporates robust governance, diversification and liquidity protections. The ELTIF also presents a significant opportunity to advance ESG objectives given the long-term nature of the underlying investments and the asset management industry is very focused on the opportunities that the proposed amendments offer. The proposed Regulation is also aligned with the EU's climate and environmental goals.

In response to the Council's announcement, AIMA issued a [press release](#) welcoming the proposed reforms. It highlighting that the new rules will significantly upgrade the ELTIF product and will make it easier for asset managers to launch products that cater to both institutional and retail clientele with additional flexibility for the former, and important protections for the latter, ensuring that regulatory requirements are properly calibrated.

##### (b) *Council releases political agreement text of the proposed Regulation amending ELTIF Regulation*

On 7 December 2022, the Council of the EU published an [information note](#) containing a letter sent by Presidency of the Council to the Chair of the European Parliament's ECON Committee on Economic



and Monetary Affairs. In an Annex to the letter, the Council sets out the text of the proposed Regulation on which the Council reached provisional political agreement with the Parliament in October 2022. The letter also states that, if the Parliament adopts at first reading the text of the proposed Regulation as set out in the Annex, the Council will also adopt that text.

The EU Parliament is scheduled to consider the proposed Regulation in its 13 February 2023 plenary session.

#### 4.8 Finance Act 2022

The [Finance Act 2022](#) (the "**Act**") was signed into law on 15 December 2022 and includes the legislative provisions for the tax measures announced as part of Budget 2023 as well as introducing new measures and amendments to the Irish tax code. Items of the Act of relevance to the funds industry are as follows:

(a) *VAT exemption for management of non-Irish EU Funds*

The Act includes legislative changes which bring the management of UCITS and AIFs, authorised by the competent authority of another EU Member State, within the scope of the Irish VAT exemption for management of specified investment funds. Fund managers and other fund service providers in Ireland providing management services to such funds would no longer be entitled to VAT recovery on costs relating to this activity.

(b) *Reporting for EUTs, CCFs and ILPs*

The Act provides for additional information to be provided in the existing annual reporting requirements for an Exempt Unit Trust ("**EUT**"), a Common Contractual Fund ("**CCF**") and an Investment Limited Partnership ("**ILP**"). Additional reporting requirements for these funds will include an obligation to provide details of their business activities and net asset value. The trustees of an EUT were already liable to a €3,000 penalty for failing to submit an annual statement or submitting an incomplete or incorrect statement. The Act extends these provisions to the management company of a CCF and the partners of an ILP.

(c) *Review of REIT and IREF regimes*

On Budget Day, the Minister for Finance committed to commencing a review of the Real Estate Investment Trust ("**REIT**") and Irish Real Estate Fund ("**IREF**") regimes with the Minister indicating that the review would consider institutional investment structures and how best they could continue to support housing policy objectives. As expected, the REIT and IREF regime review was not mentioned in the Act and no timeline has been provided but a review of the regimes is likely to involve engagement with industry and relevant stakeholders once the terms of review are established.

#### 4.9 Financial Stability Board ("**FSB**")

(a) *Cyber incident reporting*

On 17 October 2022, the FSB published a [consultative document](#) on achieving greater convergence in cyber incident reporting ("**CIR**").

The consultation paper sets out 16 recommendations to address impediments to achieving greater convergence in CIR. These include addressing operational challenges, challenges relating to the process of determining the point at which a reporting obligation becomes actionable following a cyber incident and around establishing an appropriate culture or behaviour among financial institutions to report cyber incidents in a timely manner, inconsistent definitions and taxonomy.

The FSB invites feedback to its consultation by 31 December 2022.

*(b) FSB proposes strengthening liquidity management framework for open-ended funds*

On 14 December 2022, the FSB published a [report](#) setting out its assessment of the effectiveness of the FSB's 2017 recommendations on liquidity mismatch in open-ended funds (OEF) as implemented by IOSCO's 2018 Recommendations. The report finds that authorities have made meaningful progress in implementing the 2017 Recommendations and looks at progress in four key areas: reducing structural liquidity mismatch, reducing shock amplification and transmission through the use of liquidity management tools (LMTs), enhancing regulatory reporting, data availability and public disclosure, and ensuring adequacy of stress testing.

The FSB will engage in monitoring member jurisdictions and will be followed up, once implementation is sufficiently advanced, with an assessment of the effectiveness of jurisdictions' policy measures in addressing risks to financial stability from OEF liquidity mismatch, as part of its work to enhance the resilience of non-bank financial intermediation (NBFi).

*(c) Policy to address systemic risk in non-bank financial intermediation*

On 9 November 2022, the Financial Stability Board ("**FSB**") published a [progress report](#) setting out policy proposals to address systemic risk in non-bank financial intermediation ("**NBFI**"). The report describes the main findings and next steps in assessing and addressing vulnerabilities in money market funds, open-ended funds, margining practices, bond market liquidity, and cross-border USD funding in emerging market economies. The report also sets out policy proposals to address systemic risk in NBFI, focusing on those activities and types of entities ("key amplifiers") that may particularly contribute to aggregate liquidity imbalances and the transmission and amplification of shocks due to their size, structural characteristics and behaviour in stress.

The focus of the policy proposals is to reduce excessive spikes in the demand for liquidity by addressing the vulnerabilities that drive those spikes or by mitigating their financial stability impact. One set of policies focuses on addressing structural liquidity mismatch in open-ended funds and promoting greater inclusion and use of liquidity management tools, including by developing guidance on the design and use of those tools. The second set comprises policy work to address pro-cyclicality of margining in centrally cleared and non-centrally cleared derivatives and securities markets. The FSB will also carry out work to assess and, where necessary, take policy action to address vulnerabilities associated with leverage.

*(d) COVID-19: FSB report on financial policies in wake of pandemic*

On 14 November 2022, the FSB published a [report](#) on financial policies in the wake of COVID-19. In the report, the FSB considers measures taken by jurisdictions to unwind policies put in place in reaction to the pandemic and the capacity of the financial system to finance strong and equitable growth. It sets out details of initiatives that it intends to pursue relating to this issue, including:

- policy work relating to margin calls.
- liquidity mismatches in open-ended funds (OEFs). The FSB intends to support global recovery by intensive monitoring of vulnerabilities in and assessments of the resilience of the global financial system that give rise to liquidity imbalances, regular exchange of information and experiences with prudential policy measures and continuing its work, in co-operation with IOSCO and other standard setters, to strengthen the resilience of NBFIs.
- Discussing further the use of prudential buffers from a system-wide, macro-prudential perspective, as appropriate.

*(e) FSB letter to G20 finance leaders and central bank governors*

On 11 November 2022, the Financial Stability Board (FSB) published a [letter](#) (dated 10 November 2022) from the FSB Chair, to G20 finance leaders and central bank governors ahead of their 15-16 November 2022 summit. The letter covers matters including the following:

- *NBFI*. The FSB notes that the provision of finance through non-banks has become as important as bank credit and is very diverse. It includes, for example, money market and investment funds, broker-dealers, hedge funds, insurance firms and pension funds, and provides a broad array of financial services. Another side of its dynamism and diversity is that some parts are not very transparent and are subject to vulnerabilities, which can be triggered during periods of market stress.
- *Cryptoasset regulatory framework*. The FSB states that developments in 2022 have served as a reminder that existing cryptoassets, including stablecoins, suffer from important structural vulnerabilities. The market turmoil also underlines that cryptoassets activities and markets must be subject to effective regulation and oversight commensurate to the risks they pose, both at the domestic and international levels. The FSB proposed a framework for the regulation of cryptoassets in October 2022
- *Climate-related financial risks*. Among other things, the FSB refers to its work with the Network for Greening the Financial System on climate scenario analyses to better understand the financial risks that different transition paths to net zero pose. It will deliver a report on this shortly.
- *Global co-operation on financial stability*. The letter concludes by noting that the current challenges make global co-operation on financial stability matters as important now as it was after the global financial crisis.

On 8 November 2022, leading economists, bankers and investors delivered an [open letter](#) to G20 leaders stating that leaders must intervene to prioritise ambitious regulation to prevent a global financial crash caused by continued financing of the fossil fuel industry and irreversible climate change.

#### 4.10 International Monetary Fund (the "IMF")

- (a) Note on Stress Testing and Systemic Risk Analysis (*This is a further update to section 3.9(b) of the report covering October 2022*)

On 9 November 2022, the IMF [published](#) a technical note entitled "Ireland: Financial Sector Assessment Program-Technical Note on Stress Testing and Systemic Risk Analysis".

The IMF conducted a comprehensive set of stress tests and risk analyses to assess the resilience and vulnerabilities of the banking, insurance, and investment fund sectors in Ireland. IMF notes the stress tests for investment funds indicate that the sector is generally resilient to redemption shocks and outlines where pockets of vulnerability exist.

Progress on the IMF's recommendations will form part of the next periodic Financial Sector Assessment Program of Ireland.

- (b) *IMF warning on illiquid open-ended funds*

On 4 October 2022, the IMF issued a [warning](#) "How Illiquid Open-End Funds Can Amplify Shocks and Destabilize Asset Prices" over open-ended funds holding illiquid assets and has called on policymakers to monitor liquidity management practices more closely.

- (c) *IMF Recommendations to the Central Bank on anti-money laundering and terrorist financing under the Financial Sector Assessment Program ("FSAP") (This is a further update to section 4.7(a) of the report covering the third quarter of 2022)*

Following its periodic FSAP of Ireland completed on 28 June 2022, the IMF has [published](#) a range of regulatory policy recommendations to the Central Bank. The FSAP review resulted in the issuance on 5 October 2022 of recommendations in the form of a paper entitled "Financial Sector Assessment Program – [Technical Note on Anti-Money Laundering/Combating the Financing of Terrorism](#)".

The IMF Paper highlights that as a growing international financial centre, Ireland is exposed to inherent transnational money laundering and terrorist financing (ML/TF) related risks.

The ML risks facing Ireland include illicit proceeds from foreign crimes (e.g., corruption, tax crimes). Retail and international banks, trust and company service providers, lawyers, and accountants are medium to high-risk for ML, while virtual asset service providers pose emerging risks. The paper highlights that Brexit, the recent move of international banks to Dublin, and the COVID-19 pandemic have all increased the money laundering risks faced by Ireland.

The Central Bank nevertheless has demonstrated a deep and robust experience in assessing and understanding their domestic ML/TF risks; however, an increased focus on risks related to transnational illicit financial flows is required.

The IMF's recommendations to the Central Bank include that:

- a thematic risk assessment undertaken by the Anti-Money Laundering Steering Committee of international ML/TF risks would enhance the authorities' risk understanding and is key to effective response to the rapid financial sector growth. The results of this assessment should be published to improve the understanding of transnational ML/TF risks and feed into the anti-money laundering and combating the financing of terrorism (AML/CFT) policy priorities going forward.
- introducing data analytics tools, including machine learning to leverage potentially available big data on cross-border payments, would allow for efficient detection of emerging risks.

Progress on the IMF's recommendations to the Central Bank will form part of the next periodic FSAP of Ireland.

#### 4.11 IOSCO

##### *(a) Regulatory Priorities*

On 9 November 2022, IOSCO published a [press release](#) from COP-27 entitled "IOSCO outlines regulatory priorities for sustainability disclosures, mitigating greenwashing and promoting integrity in carbon markets". The press release outlined the actions IOSCO has undertaken to protect investors by mitigating greenwashing in financial markets, to contribute to sustainability disclosure standards benefitting issuers and investors, and to promote well-functioning carbon markets.

##### *(b) Implementation of Liquidity Risk Management Recommendations*

On 16 November 2022, IOSCO [published](#) the findings of their thematic review assessing the implementation of their 2018 recommendations, which aimed to strengthen liquidity practices in funds. The review covered 10 of the 2018 recommendations over the fund life cycle (design, day-to-day and contingency planning). IOSCO found that generally there had been "a high-degree of implementation of regulatory requirements consistent with the objectives of the recommendations" in larger jurisdictions and that the vast majority of responsible entities reported a "high level of implementation of all the recommendations in their policies and practices". However, it was noted that there still exist some challenges and gaps that require improvement.

IOSCO found that Ireland's regulatory framework is fully consistent with nine of the ten recommendations reviewed, and that recommendation 7 (on liquidity risk investor disclosures) was broadly consistent.

- (c) *Sound education practices for securities regulators to consider in a crisis situation to support investor protection*

On 30 November 2022, IOSCO published a [report](#) entitled "Investor Behaviour and Investor Education in Times of Turmoil: Recommended Framework for Regulators based on lessons Learned from the COVID-19 Pandemic", which found that the pandemic did not hinder investor education efforts. In fact, many regulators continued, expanded and/or adapted their investor education activities to support investor protection throughout the pandemic.

- (d) *Feedback Statement on Covid Related Corporate Bond Markets Report (This is a further update to section 3.12(c) of the report covering the second quarter of 2022)*

On 16 November 2022, IOSCO published a [feedback statement](#) summarising the written comments they sought from stakeholders in relation to their [April 2022 Corporate Bond Markets paper](#). The April 2022 paper sought views to help improve market functions and liquidity provisions. Overall, the feedback received was consistent with the outcomes and observations of the report. There were a number of areas that had a general consensus. Stakeholders generally support improving liquidity provisions in the corporate bond market (while acknowledging there is no easy fix or single solution). Stakeholders are largely supportive of developments in all-to-all trading and indicated almost universal support for increasing transparency and available data, though in the area of standardisation there was limited consensus.

- (e) *Statement on 'Financial Reporting and Disclosure during Economic Uncertainty'*

On 14 November 2022, IOSCO issued a [statement](#) entitled "Financial Reporting and Disclosure during Economic Uncertainty" emphasising the importance of fair, transparent and timely disclosure from issuers about the impact of economic uncertainty.

The statement sets out considerations for issuers, for auditors, and for audit committees, encouraging them to be 'particularly vigilant in times of economic uncertainty in their consideration of how risks and uncertainties that could affect or have affected an issuer's operations, financial condition, cash flows and prospects can be transparently communicated to investors.

- (f) *Index providers and asset managers survey*

On 19 October 2022, IOSCO launched a [survey](#) on the interaction between index providers and asset managers, in order to further its understanding of certain conduct-related index provider matters.

IOSCO has identified potential areas that it wishes to study, including:

- the role of asset managers in relation to indices and index providers and the role and processes of index providers in the provision of indices;
- the potential impact of administrative errors on investment funds; and
- potential conflicts of interest that may exist at the index provider in relation to the fund.

Responses are sought by 26 November 2022.

- (g) *Retail distribution digitalisation*

On 13 October 2022, IOSCO issued a [Final Report on Retail Distribution and Digitalisation](#) on regulatory measures to address increasing risks and challenges from digitalisation of retail marketing and distribution.

The measures outlined in the report aim to assist IOSCO members in adapting their regulatory and enforcement approaches, consistent with their legal and regulatory frameworks, to meet the growing challenges posed by rapidly evolving digitalisation and online activities. The report presents a toolkit of policy measures to help IOSCO members address risks that may arise and a toolkit of enforcement measures that leverage a range of powers and technology-based investigatory techniques and enhanced collaboration with other authorities and providers of electronic intermediary services.

The policy toolkit include measures relating to:

- firm level rules for online marketing, onboarding and distribution;
- responsibility for online marketing;
- capacity for surveillance and supervision of online marketing and distribution;
- staff qualification and/or licensing requirements for online marketing;
- ensuring compliance with third country regulations; and
- clarity about legal entities using internet domains.

The enforcement toolkit include measures relating to:

- proactive technology-based detection and investigatory techniques; and
- powers to promptly take action where websites are used to conduct illegal securities and derivatives activity and other powers effective in curbing online misconduct.

The report is intended to provide a variety of measures that IOSCO members are encouraged to consider when determining their approach to online offerings and marketing.

#### 4.12 LIBOR

- (a) *FCA Consultation (This is a further update to section 4.6(d) of the report covering the second quarter of 2022)*

On 23 November 2022, the Financial Conduct Authority (the "**FCA**") has published consultation paper [CP22/21](#) entitled "Consultation on 'synthetic' US dollar LIBOR" and feedback to CP22/11, in which it proposes to require LIBOR's administrator, IBA, to continue to publish the 1-, 3- and 6-month US dollar LIBOR settings under an unrepresentative 'synthetic' methodology until end-September 2024. After this, publication would cease permanently.

For sterling LIBOR, the FCA intends to continue to require IBA to publish the 3-month synthetic sterling LIBOR setting until end-March 2024, after which it will cease permanently.

- (b) *FSB Progress Report on LIBOR and Other Benchmarks Transition Issues*

On 16 December 2022, the FSB published a [progress report](#) on LIBOR and other benchmarks transition issues entitled "*Reaching the finishing line of LIBOR transition and securing robust reference rates for the future*". The report notes that most LIBOR settings have now ceased and, while certain panel-based US dollar settings are continuing until end-June 2023 to support the transition of legacy contracts, the market has already shifted new activity away from LIBOR and toward overnight risk-free rates ("RFRs").



The FSB encourages authorities and market participants alike to keep momentum for the last stage of transition and going forward to rely on benchmark rates that have a strong reference foundation, which means anchoring the financial system in overnight RFRs. Extensively used benchmarks should be especially robust and reflect credible, liquid underlying markets. This will avoid the need to repeat the transition effort experienced by the global financial community in transitioning away from LIBOR.

#### 4.13 PRIIPs Regulation *(This is a further update to section 3.4 of the report covering the second quarter of 2022)*

On 14 November 2022, ESMA published an [updated Q&A](#) on the PRIIPs KID prepared by the joint committee of the ESAs. A number of new and updated Q&As have been added including three new questions in the Investment Funds section.

The latest Q&A document includes Q&As confirming:

- for PRIIP manufacturers currently making available a PRIIP KID to investors the requirements in the Commission Delegated Regulation [2021/2268](#) do not apply until 1 January 2023. Therefore, all KIDs published prior to that point, for example for a product launched between September and December 2022 or a product with a subscription period that runs from 2022 into 2023 need to continue to comply with the existing requirements in the Commission Delegated Regulation 2017/653 until 1 January 2023.
- rules concerning the UCITS key investor information document still apply in certain specific situations, in particular, where a UCITS is not made available to retail investors in the EU unless it has decided to draw up a KID as out in the PRIIPs Regulation.

On 21 December 2022, the ESAs updated the [Q&A document](#) revising and including new Q&As which reflect the amendments introduced in Delegated Regulation (EU) 2021/2268.

#### 4.14 Protected Disclosures (Amendment) Act *(This is a further update to section 3.11 of the report covering October 2022)*

On 14 October 2022, S.I. No. [510/2022](#) Protected Disclosures (Amendment) Act (Commencement) Order 2022 was published in Iris Oifigiúil which sets 1 January 2023 as the date on which the Protected Disclosures (Amendment) Act 2022 (No. [27 of 2022](#)) (the "**Act**") comes into operation. The Act implements the EU Whistleblowing Directive (EU) 2019/1937 and amends the Protected Disclosures Act 2014.

On 9 November 2022, the Minister for Public Expenditure and Reform published [interim guidance](#) for public sector employees and prescribed persons on the handling of reports made to them under the Protected Disclosures Act. The guidance issued is intended to help public sector employers and prescribed persons in understanding the requirements of the Act as regards getting these internal and external channels established by commencement on 1 January.

While this guidance is aimed at public sector bodies, the Minister has stated that 'those private sector employers that will be required to establish internal reporting channels for their staff under the new legislation may also find some of the material in the guidance helpful.' This interim guidance is due to be reviewed in 2023 with a view to issuing full formal statutory guidance in the first quarter of 2023.

Our recent [advisory](#) entitled 'Guide to the Protected Disclosures (Amendment) Act, 2022' outlines the key features of the Amendment Act and next steps for employers.

#### 4.15 Sustainable Finance

##### *(a) ESAs Q&A on SFDR*

On 17 November 2022, the ESAs published a [Q&A](#) document on SFDR Level II, which seeks to clarify disclosure obligations in the following areas:

- current value of all investments in principal adverse impacts ("PAI") and Taxonomy aligned disclosures;
- PAI disclosures;
- financial product disclosures;
- multi-option products;
- taxonomy-aligned investment disclosures; and
- financial advisers and execution-only Financial Market Participants.

The Q&A also acknowledges that lack of reportable data needed to comply with obligations under SFDR and the Taxonomy Regulation is a major challenge for financial market participants. In relation to investments in undertakings that fall under the scope of the future CSRD, the ESAs note that financial market participants "may have to rely on the available data during the period before the application of the CSRD".

*(b) ESAs announce delay to in the review of the PAI Indicators in SFDR RTS (This is a further update to section 3.17(i) of the report covering the second quarter of 2022)*

On 14 November 2022, ESMA published a [letter](#) (dated 26 October 2022) sent by the ESAs to the European Commission concerning the status of the development of amendments to the SFDR Level II. In April 2022, the Commission had requested the ESAs to produce amendments to the SFDR relating to the indicators for PAI and the financial product disclosures by April 2023.

The ESAs advise the Commission that they will not be in a position to deliver on their mandate to review the PAI indicators under SFDR by the original deadline of 28 April 2023. The ESAs note the technical complexity of the undertaking and the need to allow sufficient time for stakeholder consultation, including from a range of expert bodies or agencies. The ESAs state that they now consider it important to develop a more objective basis to the "do not significantly harm" framework and to expand significantly on the social indicators. In the letter, the ESAs notify the Commission of a delay of up to six months in the delivery of this mandate. The letter also highlights the need to prioritise the Commission's separate mandate on amendments to the SFDR Level II concerning fossil gas and nuclear energy amendments.

The ESAs have clarified that they do not anticipate producing the proposed PAI indicator amendments before November 2023 and therefore there will be at least a six-month delay for the delivery of the mandate.

*(c) Commission adopts a proposal to amend the SFDR RTS (This is a further update to section 4.10(d) of the report covering the third quarter of 2022)*

As outlined in our previous quarterly report, the ESAs [joint final report](#) on 30 September set out draft amendments to the SFDR Level II RTS on the disclosure of financial products' exposure to investments in fossil gas and nuclear energy activities. Following consideration of the ESA's draft, the European Commission has now proposed changes to the existing SFDR Level II text by way of a [legislative proposal](#), in the form of a new Delegated Regulation, together with annexes.

The proposed changes to the existing SFDR RTS regarding the information that should be provided in pre-contractual documents, on websites, and in periodic reports about a product's exposure to

investments in fossil gas and nuclear energy activities were required as a result of the Complementary Delegated Act (made under the Taxonomy Regulation).

The Commission's proposal contains a requirement that financial market participants use pie charts to disclose the degree to which investments are in taxonomy-aligned activities.

The legislative proposal has been sent to the Council of the EU and to the European Parliament, which each has a maximum of three months to scrutinise the contents.

*(d) Consultation on use in funds' names of ESG or sustainability-related terms*

On 18 November, ESMA launched a [consultation](#) seeking input on [draft guidelines](#) on the use in funds' names of ESG or sustainability-related terms.

In its [press release](#), ESMA notes that funds' names are a powerful marketing tool. In order not to mislead investors, ESMA believes that ESG- and sustainability-related terms in funds' names should be supported in a material way by evidence of sustainability characteristics or objectives that are reflected fairly and consistently in the fund's investment objectives and policy. ESMA is particularly seeking stakeholders' feedback on the introduction of quantitative thresholds for the minimum proportion of investments sufficient to support the ESG or sustainability-related terms in funds' names. ESMA Chair, Verena Ross noted that "the objective is to ensure that investors are protected against unsubstantiated or exaggerated sustainability claims while providing both NCAs and asset managers with clear and measurable criteria to assess names of funds including ESG or sustainability-related terms".

The main elements of the consultation paper on the draft guidelines for the use of ESG or sustainability-related terms in funds' names on which ESMA is seeking stakeholders' feedback are:

- a quantitative threshold (80%) for the use of ESG related words;
- an additional threshold (50%) for the use of "sustainable" or any sustainability-related term only, as part of the 80% threshold;
- application of minimum safeguards to all investments for funds using such terms (exclusion criteria);
- additional considerations for specific types of funds (index and impact funds).

ESMA will consider the feedback it receives to this consultation after it closes on 20 February 2023 with a view to finalising the guidance afterwards.

ESMA proposes that the draft guidelines would become applicable from three months after the publication of their translation on the ESMA website. Furthermore, a transitional period of six months is suggested for those funds launched prior the application date, in order to comply with the guidelines.

*(e) Financial Conduct Authority consultation on sustainability disclosure requirements*

On 25 October 2022, the FCA has published consultation paper [CP22/20](#) entitled "Sustainability Disclosure Requirements (SDR) and investment labels", in a bid to clamp down on greenwashing. The FCA is proposing a package of new measures including investment product sustainability labels and restrictions on how terms like 'ESG', 'green' or 'sustainable' can be used.

The FCA has noted that it intends to seek further consultation on the applicability of the proposed rules to non-U.K. investment managers at a later date.

The consultation is open for comments until 25 January 2023 with final rules expected in June 2023 and a phased implementation from mid-2023 to 2025.

- (f) *Supplemental Report on methodology and technical screening criteria published by the Platform on Sustainable Finance (This is a further update to section 4.18(b) of the report covering the first quarter of 2021)*

On 28 November 2022, the EU Platform on Sustainable Finance (the "**Platform**") [published](#) a supplemental report on the methodology and technical screening criteria for the climate and environmental objectives under the Taxonomy Regulation.

The recommendations and criteria set out in Part A of the report include:

- an update on the Platform's work undertaken since March 2022;
- a framework methodology to describe 'enabling activities'. Enabling activities are referred to in Articles 10-15 of the Taxonomy Regulation. By way of summary these Articles define the conditions under which a substantial contribution to the six environmental objectives of the taxonomy can be made;
- recommendations for the European Commission to consider in its further work on the EU Taxonomy. These include that the Commission should develop and complete 'do no significant harm' criteria for all objectives and for all activities, as well as recommendations on the adaptation to climate change objective;

Part B contains additional technical screening criteria that have been developed since March 2022.

The report is a supplement to the recommendations published by the Platform in March 2022 and should be read in that context.

The Commission notes that this additional advice will be carefully analysed and will inform the Commission's continued reflections on the matter. The Platform's advice does not bind the Commission on any decision.

- (g) *Taxonomy FAQs*

On 20 December 2022, the Commission published two draft Commission notices containing FAQs on the interpretation and implementation of certain legal provisions of the EU Taxonomy Climate Delegated Act and the Disclosures Delegated Act under Article 8 of the Taxonomy Regulation.

The notices relate to the EU Taxonomy Climate Delegated Act and the Taxonomy Regulation respectively:

- [Draft notice](#) on the interpretation and implementation of certain legal provisions of the EU Taxonomy Climate Delegated Act (EU) 2021/2139) establishing technical screening criteria for economic activities that contribute substantially to climate change mitigation or climate change adaptation and do no significant harm to other environmental objectives. This Notice contains technical clarifications responding to FAQs on the technical screening criteria set out in the Climate Delegated Act. The purpose of this Notice is to facilitate the effective application of the Climate Delegated Act and contains three sections - section 1, Horizontal questions, section 2, sector specific questions on technical screen criteria, and section 3, questions on recurring DNSH criteria.
- [Draft notice](#) on the interpretation and implementation of certain legal provisions of the Disclosures Delegated Act (EU) 2021/2178) under Article 8 of the Taxonomy Regulation on the reporting of Taxonomy-eligible and Taxonomy-aligned economic activities and assets. The

notice contains four sections, General FAQs, FAQs on Turnover KPI, FAQs on Turnover Capex (Capital Expenditure) KPI, FAQs on Turnover Opex (Operational Expenditure) KPI.

The FAQs complement previous guidance issued and are intended to assist financial and non-financial undertakings in the implementation of the relevant legal provisions. Formal adoption will take place later on, as soon as the language versions are available.

(h) *European Commission publishes further FAQs on sustainability disclosures under Article 8 of the Taxonomy*

On 6 October 2022, the European Commission published a Commission Notice [frequently asked questions](#) ("FAQs") on the interpretation of certain legal provisions of the Disclosures Delegated Act under Article 8 of the Taxonomy Regulation on the reporting of eligible economic activities and assets (2022/C 385/01). The FAQs were previously published in draft in February 2022.

Article 8 of the Taxonomy Regulation requires large public interest entities to include additional information in their non-financial statements on how and to what extent their activities are associated with environmentally sustainable economic activities that are aligned with the EU Taxonomy.

The FAQs aim to clarify the content of Commission Delegated Regulation (EU) 2021/2178 (Taxonomy Disclosures Delegated Act), supplementing Article 8 of the Taxonomy Regulation, which sets out the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of the non-financial reporting directive (including non-financial undertakings, asset managers, credit institutions, investment firms, and insurance and reinsurance undertakings).

These latest FAQs complement the [22 FAQs](#) published by the Commission in December 2021.

(i) *EU Platform on Sustainable Finance*

On 12 October 2022, the EU Platform on Sustainable Finance published two reports on Taxonomy Regulation implementation.

(i) *Report on [Recommendations on Data and Usability](#) as part of Taxonomy reporting;*

The recommendations made in the report relate to the following key themes:

- recommendations on proposed changes to Level I or Level II regulations on EU Taxonomy reporting, to support both the 2024 review period (within Article 8 of Commission Delegated Regulation (EU) 2021/2178 (Disclosures Delegated Regulation)) and considering key usability challenges with the current proposals around sustainable finance disclosures.
- recommendations for supplementary guidance from the European Commission to user groups.
- recommendations for supervisory guidance from the European Supervisory Authorities (ESAs) to user groups.
- proposed recommendations on policy consistency across the sustainable finance framework.
- proposed recommendations on EU Taxonomy usability.

The report includes a summary of the recommendations at Table 2, showing the recommendations prioritised as high, medium or low based on the urgency with which they are addressed to support upcoming and implemented sustainable finance reporting obligations.

(ii) *Further report on [Minimum Safeguards](#) relating to the Taxonomy*

Under the Taxonomy Regulation, environmentally sustainable economic activities must comply with minimum safeguards, requiring organisations to implement procedures aligned with specified international human rights requirements (including the UN Guiding Principles for Business and Human Rights) (Articles 3 and 18).

The report provides recommendations on assessing compliance with the minimum safeguards. It suggests that compliance with minimum safeguards should be defined for human rights (including workers' rights), bribery and corruption, taxation and fair competition.

The recommendations made in both reports are not binding on the Commission and the advice will feed into Commission work on the usability of the [EU taxonomy](#).

(j) *Corporate Sustainability Reporting Directive (This is a further update to section 4.10(j) of the report covering the third quarter of 2022)*

On 28 November 2022, the Council of the EU [agreed](#) the text of the new Corporate Sustainability Reporting Directive ("**CSRD**"). This follows [adoption](#) of the text on 10 November 2022 by the European Parliament.

The CSRD will enter into force 20 days after publication in the OJ. The application of CSRD will begin on a phased basis between 2024 and 2028:

- From 1 January 2024 for large public-interest companies (with over 500 employees) already subject to the non-financial reporting directive, with reports due in 2025;
- From 1 January 2025 for large companies that are not presently subject to the non-financial reporting directive (with more than 250 employees and/or €40 million in turnover and/or €20 million in total assets), with reports due in 2026;
- From 1 January 2026 for listed SMEs and other undertakings, with reports due in 2027. SMEs can opt-out until 2028.

Under the CSRD, companies will be required to report on issues ranging from environmental sustainability and social rights to human rights and governance factors. The CSRD rules will also require companies to have their reported sustainability information independently audited.

The CSRD will require disclosure under a common framework of European Sustainability Reporting Standards ("**ESRS**"), currently under development by the European Financial Reporting Advisory Group ("**EFRAG**"). On 22 November 2022, EFRAG submitted the first set of draft ESRS to the European Commission, following a public consultation. The Commission will now consult with EU bodies and member states on the draft standards, before adopting the final standards as delegated acts in June 2023. The will be followed by a scrutiny period by the European Parliament and Council of the EU.

(k) *Speech by Commissioner McGuinness on the sustainable finance framework*

On 6 December 2022, Commissioner McGuinness delivered a [speech](#) on the sustainable finance framework at the ECON-ENVI joint committee meeting which assessed the state of play on the remaining technical screening criteria and on the work of the Platform on Sustainable Finance. The speech gave an overview of the Commission's work focused on the sustainable finance framework, namely the SFDR; ESG ratings; taxonomy; and the new Platform on Sustainable Finance.



Some key takeaways from the speech are as follows:

- While SFDR was designed as a disclosure regime in practice the market is using SFDR more as a labelling scheme. She acknowledged the fears within the financial sector around legal and reputational risks regarding how some of the fundamental concepts of SFDR should be understood and applied.
- Early next year the Commission will publish a set of Q&As to try and bring some clarity on specific points.
- The Commission is working on a comprehensive assessment of the implementation of SFDR. In practice, this will involve workshops with industry and other stakeholder groups, and a public consultation and this should already begin early next year.
- On ESG rating agencies, the Commission is considering a proposal to bring more transparency to the market and introduce rules on their operations.
- In relation to clarifications on the Taxonomy, the Commission will aim to publish over 200 frequently asked questions to support businesses with reporting obligations under the Taxonomy. This will also involve unveiling new online tools, and this will help stakeholders use the Taxonomy, and to better collect feedback from the market on usability.
- The Commission is looking to identify technical screening criteria for activities that can make a substantial contribution to the remaining four environmental objectives: circular economy; biodiversity; pollution and water. The Platform on Sustainable Finance has already delivered its report on these four environmental objectives – (the so-called 'TAXO 4'). The Commission is looking at all of its advice, including the recommendations on further expansion. The newly constituted Platform on Sustainable Finance will be established from the beginning of next year with a two year mandate.
- The Commission is reflecting on timing for next steps on these remaining elements and the speech noted the Commission will need time for an inclusive consultation process involving Parliament, Member States, and other stakeholders towards addressing the TAXO 4 elements.

Alongside the initiatives mentioned above, the speech also referred to bringing forward delegated acts on the Corporate Sustainability Reporting next year. EFRAG has already submitted draft standards, and the Commission is involved in that consultation process.

*(I) IOSCO Good Sustainable Finance Practices (This is a further update to section 4.14(I) of the report covering the fourth quarter of 2021)*

On 7 November 2022, IOSCO published its Good Sustainable Finance Practices [Call for Action](#) calling upon all voluntary standard setting bodies and industry associations operating in financial markets to promote good practices among their members to counter the risk of greenwashing related to asset managers and ESG rating and data providers. IOSCO will engage with voluntary standard setting bodies and industry associations to promote the adoption and implementation of the good practices stemming from the 2021 IOSCO [recommendation](#)s, as a baseline to address greenwashing and related investor protection concerns within the context of their domestic regulatory frameworks.

Section 1 outlines the following good practices for asset managers:

- clear expectations for asset managers regarding: (a) the development and implementation of practices, policies and procedures relating to material sustainability-related risks and opportunities; and (b) related disclosure;

- clear expectations regarding product-level disclosures to help investors better understand: (a) sustainability-related products; and (b) material sustainability-related risks and opportunities for all products;
- common sustainable finance-related terms and definitions, including those related to ESG approaches, to ensure consistency throughout the global asset management industry and comparability among sustainability related products;
- promoting or participating in financial and investor education initiatives relating to sustainability; and
- clear expectations regarding due diligence and/or the gathering and reviewing of information on the ESG ratings and data products that asset managers use in their internal processes.

Section 2 addresses ESG rating and data providers who provide important services that are relied upon by market intermediaries, investment funds, issuers, pension funds, central banks, and others

The IOSCO Good Practices are voluntary and are not intended to conflict with national or regional legal and regulatory frameworks.

*(m) ESAs call for evidence on greenwashing*

On 15 November 2022, the ESAs published a [call for evidence](#) on better understanding greenwashing, to gather input on how to understand the key features, drivers and risks associated with greenwashing and to collect examples of potential greenwashing practices. Evidence is sought on potential greenwashing practices within and outside the scope of current EU sustainable finance legislation, examples of potential greenwashing practices across the EU financial sector relevant to various segments of the sustainable investment value chain and of the product lifecycle. The ESAs use the term "greenwashing" to include sustainability-related claims relating to all aspects of ESG.

The deadline for comments is 10 January 2023 and contributions will feed into the supervisory authorities' findings for progress reports to be published in May 2023, with final reports due in May 2024.

*(n) Commission requests EBA advice on green loans and mortgages*

On 22 November 2022, the EBA published a [call for advice](#) on green loans and mortgages received from the European Commission.

The Commission outlines that the market for green retail loans and mortgages is developing, based on a range of market practices, and that credit institutions are starting to apply and test the EU taxonomy as a basis for originating retail green loans, including mortgages.

The request for advice asks the EBA to:

- propose and consider the merits of an EU definition of green loans and mortgages.
- consider measures to encourage the uptake or access to green finance by retail and SME borrowers.
- provide an overview of current market practices and the prevalence of green loans in the banking market.

The EBA is asked to deliver its advice by 29 December 2023. The advice will allow the Commission to consider measures to encourage the development of the green loans and mortgages market.

(o) *Task Force on Nature-related Financial Disclosures*

On 4 November 2022, the Task Force on Nature-related Financial Disclosures ("**TNFD**") published the [third beta version](#) of its disclosure framework for consultation. The TNFD framework will provide guidance for organisations to report and act on evolving nature-related risks, to support a shift in global financial flows away from nature-negative outcomes and towards nature-positive outcomes. The third beta version incorporates significant updates and enhancements, including:

- expansion of the draft disclosure recommendations to incorporate dependencies and impacts on nature alongside risks and opportunities to the organisation.
- proposed new disclosure recommendations related to supply chain traceability, the quality of stakeholders (including rights holders) engagement, and the alignment of an organisation's climate and nature targets.
- an adaptive approach to the application of TNFD's disclosure recommendations to accommodate the varying materiality and reporting preferences and needs of report preparers. This is intended to support early action by companies and financial institutions, and encourage increasing disclosure ambition over time.
- Draft guidance on target setting developed with the Science Based Targets Network and draft disclosure guidance for financial institutions.

TNFD also published two new discussion papers alongside the third beta version, on scenarios and on societal dimensions of nature-related risk management and disclosure. The papers are intended to encourage market participants to contribute further to the TNFD's work in these areas.

It aims to release a further updated beta version in February 2023 and to publish the final framework in September 2023.

(p) *FSB TCFD status report*

On 13 October 2022, the Taskforce on Climate-Related Financial Disclosures ("**TCFD**") has published its 2022 Status [Report](#) and accompanying [press release](#), which provides an overview of the steady increase in climate-related financial disclosures in companies' 2021 financial reporting notes since the TCFD Recommendations were first published in 2017.

The Report highlights that:

- the percent of companies disclosing TCFD-aligned information continues to grow, but more urgent progress is needed.
- all regions have significantly increased their levels of disclosure over the past three years.
- a majority of asset managers and asset owners report to their clients and beneficiaries.
- nearly 50% of asset managers and 75% of asset owners reported information aligned with at least five of the 11 recommended disclosures.
- the percentage of companies disclosing the TCFD recommendations in financial filings or annual reports has increased each year.

(q) *Sustainable Banking and Finance - review and recommendations on the education and training needs for retail financial services in Ireland*

On 9 November 2022, the Minister of State at the Department of Finance with special responsibility for Financial Services, Credit Unions and Insurance, launched a [report](#) outlining the skills required by the domestic retail financial services sector to finance Ireland's net zero transition. The Sustainable Banking & Finance Report containing recommendations and action plan for the type of sustainable finance education and training that is required for the retail financial services sector in Ireland.

(r) *EFAMA Markets Insights on ESG Ratings*

On 13 October 2022, EFAMA published its [Market Insights Issue 11](#) entitled "ESG ratings of Article 8 and 9 funds assessing the current market and policy recommendations for the future".

EFAMA analysed the ESG ratings assigned by two commercial providers – Refinitiv and Morningstar Direct – to a large sample of Article 8 and 9 funds, focusing on the differences between ratings given to the same funds by these firms and between ratings of Article 8 and Article 9 funds. Based on its findings EFAMA presents a number of policy recommendations to help ensure that the market for ESG ratings functions well in the future, including:

- financial advisors and fund distributors should not necessarily offer only Article 9 funds to clients who are expressing strong ESG preferences, and regulators should refrain from imposing such a requirement. Advisors and distributors need to verify if the fund's ESG approach is aligned with the investor's ESG preferences and views on risks.
- Article 8 or 9 status as well as ESG ratings, should not be used in isolation. To understand the ESG characteristics of a fund, advisors and distributors should use additional tools, including the European ESG Template (EET), national and international guidance, consulting services, pre-contractual and periodic reporting, etc.
- an EU regulatory framework for ESG ratings ought to be introduced, which should have three main objectives:
  - imposing disclosure of the methodologies and data sources used to provide ESG ratings;
  - providing a level playing field by ensuring that all major firms assigning ratings to funds domiciled in the EU are within scope, including non-EU providers generating a certain percentage of EU revenues; and
  - preserving market integrity by setting specific requirements for internal controls and governance processes to avoid conflicts of interest.
- a voluntary code of conduct could be developed in the meantime to provide valuable insight for the future legal framework.

(s) *FSB reports call for continued progress on climate-related financial risks*

On 13 October 2022, the FSB published two reports as part of its work on addressing climate-related financial risks, outlined in its [Roadmap](#) for addressing climate-related financial risks.

- [final report](#) on supervisory and regulatory approaches to climate-related risks. The report aims to assist supervisory and regulatory authorities in developing their approaches to monitor, manage and mitigate cross-sectoral and system-wide risks arising from climate change and to promote consistent approaches across sectors and jurisdictions.
- [progress report](#) on climate-related disclosures, which takes stock of progress made over the past year by the new global standard-setter, by national and regional authorities and by firms.

Executive summaries are included in both reports.

The reports were delivered by way of a [letter](#) from the FSB Chair to the G20 Finance Ministers and Central Bank governors. The letter also outlines the work the FSB is undertaking to tackle current financial stability issues, including those related to commodity markets or hidden leverage.

(t) *ISDA blog*

On 4 November 2022, ISDA posted a [blog](#) 'Understanding and Managing the Impact of Climate Risk' which builds on an ISDA EY [report](#) on firms' approaches to climate risk and scenario analysis in trading books.

(u) *IOSCO consultation on carbon markets*

On 9 November 2022, IOSCO launched a [consultation](#) on recommendations for the development of sound and well-functioning carbon markets.

The deadline for responses is 10 February 2023.

(v) *ECB Working Paper*

On 14 November 2022, the ECB published a Working Paper entitled "[Are ethical and green investment funds more resilient?](#)" This paper investigates whether investors in ESG funds react differently to past negative performance, making these funds less sensitive to short-term changes in returns. The results show that ESG funds exhibit a weaker flow-performance relationship compared to traditional funds in 2016-2020. This finding may reflect the longer-term investment horizon of ESG investors and may allow funds to provide a stable source of financing to the green transition and thereby reduce risks for financial stability.



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