WILLIAM FRY

Asset Management & Investment Funds Update

September 2024

Key Dates & Deadlines: Q3/4 2024

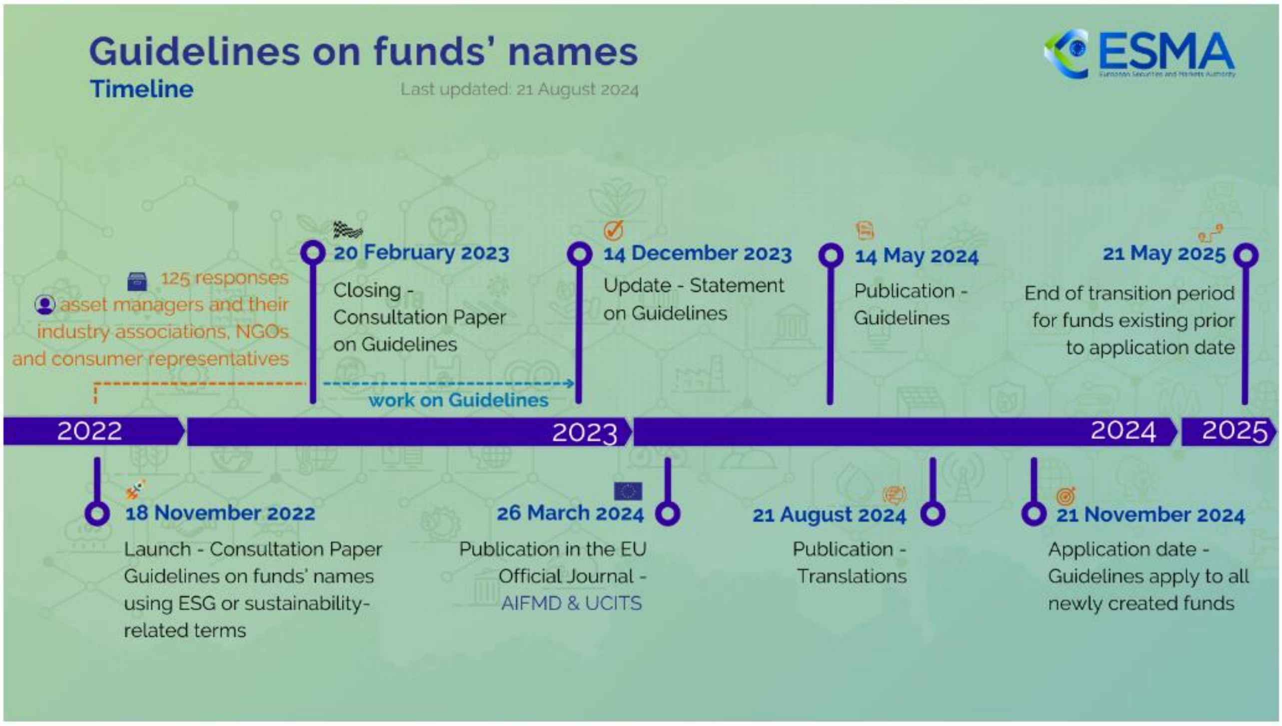
The following are key dates and deadlines in Q3/4 2024 along with possible impacts and action items arising for fund managers.

Date	Source	Summary	Action/Impact
11 September		CBI passporting notifications Change of submission procedure for some CBI passporting notifications from email to CBI portal	Please see article on topic in this update for further details. Please also see article on topic in the January 2024 update.
Q4		EMIR 3.0 Regulation and amending Directive expected to be adopted with impacts across the key EMIR requirements of clearing, risk management and reporting.	EMIR 3.0 focusses on incentivising clearing in the EU post-Brexit, including through the introduction of a new EU CCP active account obligation. It also sets down rules for NCAs' application of penalties for EMIR breaches and amends the clearing threshold calculation methodology. Provision is made for the adoption of technical standards before certain EMIR 3.0 provisions come into effect.
October		UK Overseas Funds Regime (OFR) OFR gateway opens for TMPR stand-alone schemes and in November for TMPR umbrella schemes.	Please see article on topic in the August 2024 Update for further details.
8 October		ESMA draft guidelines and regulatory technical standards on liquidity management tools Deadline for feedback on draft measures mandated by amendments to AIFMD and UCITS as part of the AIFMD Review.	Please see article on topic in the August 2024 Update for further details.

21 November	ESMA Guidelines on funds' names using ESG and sustainability related terms Deadline for these guidelines to apply for newly established funds. Funds existing before this date have a transitional period until 21 May 2025 to apply the guidelines.	Please see article on this topic in this update for further details.
22 November	Macroprudential policy for non-banks Closing date for Commission consultation on the adequacy of macroprudential policies for the non-bank financial intermediation sector	See our June 2024 Update for further details.
21 December	European Green Bond Standard Application date for key provisions of the Regulation setting down the voluntary standard for issuing bonds using the 'European Green Bond' or 'EuGB' designation.	The proceeds of EuGB bonds are (subject to limited flexibilities) allocated to Taxonomy-aligned environmentally sustainable activities and the Regulation includes pre- and post-issuance transparency rules, regulated prospectus rules, and a new registration system and supervisory framework for external reviewers which are required to review issuers' reports.
30 December	Markets in Crypto-Assets Regulation (MiCAR) Final MiCAR application date.	See here for further details.
21 May 2025	ESMA Guidelines on funds' names using ESG and sustainability related terms Funds in existence before 21 November 2024 must comply with the guidelines from this date.	Please see article on this topic in this update for further details

Effective dates for Guidelines on funds' names using ESG and sustainability related terms confirmed

On 21 August 2024, ESMA published the translations in all official EU languages of its Guidelines on funds' names using ESG or sustainability-related terms. The Guidelines will start applying on 21 November 2024 and any new funds created on or after this date should apply the guidelines immediately. For funds existing before 21 November 2024 there will be a transitional period, and those funds should apply the Guidelines on 21 May 2025.



Background

The Guidelines, published on 14 May 2024, aim to ensure that investors are protected against unsubstantiated or exaggerated sustainability claims in fund names, and to provide asset managers with clear and measurable criteria to assess their ability to use ESG or sustainability-related terms in fund names. Please see the article in the June 2024 update for further information on the requirements and implications of the Guidelines.

Industry submissions to regulators

Irish Funds has made a submission to the Central Bank of Ireland (CBI) and EFAMA has issued a Q&A to outline key industry concerns and implementation issues in connection with the Guidelines. Both submissions highlight the importance of national competent authorities implementing the Guidelines in a consistent manner. One example is the co-ordination of the understanding of the concept of "meaningful investment in sustainable investments".

Irish Funds has requested that the CBI facilitate an extension of the existing SFDR "fast-track" submission process for updates to pre-contractual disclosures to comply with the provisions of the Guidelines in accordance with the deadlines. The asset management and investment funds industry awaits the outcome of these submissions.

Central Bank of Ireland Passporting Notification procedural change

The Central Bank of Ireland has notified Irish Funds that with effect from 11 September 2024 it is changing the process for UCITS and certain AIF passporting notifications from email to the CBI Portal. After 11 September it will not be possible to submit the following passporting notifications via email:

- UCITS Outward Marketing submissions - notifications and de-notifications (full sub-fund)
- Article 32 Outward submissions, i.e., Irish AIFMs marketing EU AIFs in EU Member States (excluding Ireland) – notifications and de-notifications; and
- Article 31 Inward submissions, i.e., Irish AIFMs marketing EU AIFs in Ireland - notifications and de-notifications

Testing of the new CBI portal is underway with pilot firms. The Central Bank will issue guidance and make it available on the Central Bank website on submitting via the portal. Irish AIFMs intending to passport EU AIFs from 11 September 2024 who are not already registered on the CBI portal will need to register their institution and any delegates must also complete the registration process.

All other passporting submissions

Any passporting submissions not listed above will continue using the email mailbox submission process.

Template UCITS and AIF cross-border marketing and management notifications

On 21 December 2023, harmonised templates and regulatory information requirements for the notification of cross-border marketing and management of UCITS and AIFs in the EU were published by the European Commission. Full details on these harmonised templates can be found in the January 2024 update..

European Commission provides further clarifications on EU corporate sustainability reporting rules

On 7 August 2024 the European Commission published a set of FAQ, in the form of a draft Commission Notice, on the implementation of the EU corporate sustainability reporting rules. The CSRD FAQ have 'draft status' and may be subject to change before final adoption. They serve as interpretative guidance, but they do not provide official legal interpretations.

Examples of questions dealt with

The questions are primarily a resource for entities who may have to report under CSRD and other stakeholders in scope of sustainability reporting requirements, such as auditors. The FAQ deal with issues such as the scope of the rules, how to determine company size categories for compliance dates, available exemptions, which sets of ESRS to apply, and considerations for using estimates when value chain information is unavailable. The FAQ also covers auditing and assurance-related issues, including approval and training requirements for auditors and accreditation standards for independent assurance providers.

UCITS and AIF exemption

Questions 11 – 14 confirm that UCITS and AIFs are exempted from reporting sustainability information even if these financial products are within the scope of the Accounting Directive. However, undertakings that manage UCITS and AIFs fall under the scope of the sustainability reporting obligations if they meet the legal form and company size criteria provided by the CSRD. The FAQ specifically mentions ETFs, stating since these financial products are established as UCITS or AIFs the same exemption applicable to UCITS and AIFs applies.

EU Taxonomy related clarification

The FAQ provides clarifications on what entities must include Article 8 Taxonomy Regulation disclosures in their sustainability statements and whether there are circumstances where an entity may not have to do so.

An approach to macroprudential policy for investment funds

On 23 July 2024, the Central Bank of Ireland (**CBI**) published feedback to its macroprudential policy for investment funds discussion paper (**DP11**) (**the Feedback Statement**). The Feedback Statement includes both DP11 industry feedback and CBI feedback to some of the key themes raised by industry.

Background

DP11 issued in July 2023 and set out the reasons the CBI believes a macroprudential policy for funds is necessary, what the objective and principles of such a policy should be, and potential macroprudential tools for addressing leverage, liquidity and interconnectedness risks to financial stability arising from the funds sector.

Feedback Statement

The DP11 Feedback Statement does not propose any future macroprudential policy initiatives. Instead, the CBI confirms its intention to focus on supporting the FSB, IOSCO and the EU in their ongoing work in this space and on implementing the domestic macroprudential tools recently deployed in respect of Irish authorised GBP LDI funds (see our May 2024 Update) and property funds (see our Dec 2022 Update).

CBI feedback

As summarised below, the CBI focussed its feedback on four key themes of systemic risk and cohorts of funds, no "one-size-fits-all" approach, benefits and costs of policies, and international coordination, governance and data.

Systemic Risk and Cohorts of Funds

The CBI remains of the view, as outlined in DP11, that macroprudential policy measures should target particular fund 'cohorts' (term undefined - a key issue raised in industry feedback) as there is precedent for vulnerabilities within cohorts amplifying adverse market shocks. While the CBI acknowledges that fund managers are well positioned to manage liquidity at individual fund level, it sees a role for authorities in monitoring the systemic risk arising from the collective action of fund managers across a particular cohort of funds when responding to a market shock.

No "One-Size-Fits-All" Approach to Macroprudential Policy

Responding to industry feedback that macroprudential policy is based on bank-centric concepts, the CBI noted a macroprudential framework for funds cannot be delivered by applying that in place for the banking sector: *"For example, bank-like capital requirements are not appropriate for the nature of the systemic risk posed by fund cohorts. The framework should be bespoke to the nature of the systemic risk from fund cohorts. Taking into account the diversity of the sector, it is clear that a 'one-size-fits-all' approach is not appropriate."*

Benefits and Costs of Macroprudential Policies

While noting policymakers must ultimately decide on whether to implement any given policy, the CBI agreed with industry feedback on the need to weigh the benefits against the economy-wide costs of any macroprudential policy for funds and for such analysis to be supported by qualitative and quantitative evidence.

CBI work at international level

The CBI:

- is supporting EU work to implement the FSB revised recommendations on liquidity risk management for open-ended funds (**OEFs**) (see our Jan 2024 Update), which it notes is presenting certain challenges, and the IOSCO guidance on liquidity management for OEFs (see our Jan 2024 Update);
- will feed into the Commission's consultation on addressing the adequacy of macroprudential policy for non-bank financial intermediation (**NBFI**) which includes funds (see our June 2024 Update);
- stresses the importance of robust data for macroprudential risk assessment and calls for coordination domestically and internationally to ensure data quality and data sharing; and
- highlights the need for international coordination, reciprocation and governance of macroprudential measures to avoid regulatory arbitrage and spillover effect.

Next Steps

As managers are likely aware, the CBI recently issued a survey on the use of liquidity management tools (LMTs). As noted in the Feedback Statement, the survey is to support the abovementioned international work on liquidity risk management in OEFs and inform the CBI as to the implementation challenges for price-based LMTs. It also likely ties in with the recently issued ESMA consultations on LMT guidelines and technical standards mandated by the recent UCITS amendments introduced following the AIFMD Review (see relevant article in this month's update).

ESMA public hearing: shortening the settlement cycle to T+1

A public hearing with some 500 participants registered was held by ESMA on 10 July 2024 on shortening the settlement cycle in the European Union to T+1.

This followed responses to a call for evidence on the topic presented in a feedback statement in March 2024. There was a strong call for alignment in Europe, particularly between the EU, UK and Switzerland. At the hearing, panels presented on the pros and cons of T+1 for EU markets, a potential roadmap to T+1 in the EU and the US experience in moving to T+1. While offering increased EU competitiveness, decreased risk and potential lower margin requirements the process to get to T+1 in the EU will be complex. It will likely require changes in CSDR, in existing Level 2 regulations and potentially further regulatory guidance. The impact of international developments, particularly the US change to T+1 settlement cycle, on EU market participants will be assessed and learnings from other jurisdictions who have moved to T+1 will be useful.

Next steps

ESMA will submit its report on T+1 to the European Parliament and the Council at the latest by mid-January 2025. In the interim, ESMA will continue stakeholder engagement on the topic.

DORA dry-run exercise: updated FAQ

On behalf of the ESAs, the EBA issues a FAQ regarding the dry run exercise on reporting by financial institutions of registers of information of contractual arrangements with the ICT third-party providers. This FAQ is periodically updated. For those already looking at the FAQ, the most recent update was on 29 July 2024 where questions 74 and 75 on the definition of ICT services and ICT service providers have been updated. The ESAs have liaised with the European Commission on the interpretation of ICT services and ICT service providers under DORA and will respond to the numerous questions on this point via a formal FAQ in due course.