



MAPLES  
GROUP

# Funds & Investment Management Update – Ireland and Luxembourg

**Quarterly Update | April - June 2024**

# Table of Contents

<b>1</b>	<b>Legal &amp; Regulatory</b>	<b>3</b>
1.1	UCITS and AIFMD Update	3
1.2	Individual Accountability Framework	3
1.3	ELTIF 2.0	4
1.4	Sustainable Finance Update	4
1.5	AML/CTF Developments	5
1.6	Cross Border Notifications under AIFMD and UCITS Directive	6
1.7	EMIR Update	7
1.8	Corporate Sustainability Reporting Directive Standards	7
1.9	Central Bank Annual Report and Annual Performance Statement 2023/2024	7
1.10	GBP-Denominated LDI Funds in Ireland and Luxemburg	8
1.11	ESMA Statement on Use of AI in Provision of Retail Investment Services	8
1.12	European Commission Consultation on AI in the Financial Sector	9
1.13	ESMA Guidelines on Stress Test Scenarios under the MMF Regulation	9
1.14	EU Consultation on Macroprudential Policies for Non-Bank Financial Intermediation	9
1.15	Innovation Sandbox Programme in 2024	10
1.16	Central Bank Liquidity Management Tools - Thematic Review	10
1.17	UK Overseas Funds Regime Update	10
1.18	PRIPs Update	10
1.19	Benchmark Regulation Update	11
1.20	IFR and IFD Update	11
1.21	DORA Update	12
1.22	EU Securitisation Regulation	12
1.23	MiFID II /MiFIR Update	13
1.24	Investment Fund Statistics	14
<b>2</b>	<b>Cross-Border Marketing</b>	<b>15</b>
<b>3</b>	<b>Tax</b>	<b>15</b>
3.1	New Irish Revenue Tax Guidance on Determining Employment Status	15
3.2	FASTER Directive – Withholding Tax Reform	15
3.3	Luxembourg: Bill to amend Minimum Net Worth Tax, Taxable Dividend Election and Codification for Redemption of a Class of Shares	16
3.4	Luxembourg: Proposed Bill Clarifying GloBE Rules	17
	<b>Contacts</b>	<b>19</b>
	<b>About the Maples Group</b>	<b>21</b>

# 1 Legal & Regulatory

## 1.1 UCITS and AIFMD Update

### Luxembourg

On 3 April 2024 and 20 June 2024, the Commission de Surveillance du Secteur Financier ("CSSF") issued an updated FAQ on the law of 17 December 2010 on undertakings for collective investment amending two existing questions. Firstly, the application of MiFID rules to the marketing of funds to clarify how the marketing activities for funds should be conducted and what investment fund managers ("IFMs"), whether acting in relation to a fund under its management or otherwise, must take into consideration, including the (potential) need to obtain additional authorisations under the [law of 17 December 2010 relating to undertakings for collective investment](#) and to what extent any activities undertaken may qualify as pre-marketing. Secondly, in relation to ancillary liquid assets, the amendments relate to replacing certain out-of-date references with more generic terms.

As above with respect to UCITS, on 3 April 2024, the CSSF issued an updated [FAQ on the law of 12 July 2013 on alternative investment fund managers](#) amending one question on the application of MiFID rules to the marketing of funds. The updated question clarifies how the marketing activities for funds should be conducted and what IFMs, whether acting in relation to a fund under its management or otherwise, must take into consideration, including the (potential) need to obtain additional authorisations under the [law of 12 July 2013 on alternative investment fund manager](#) and to what extent any activities undertaken may qualify as pre-marketing.

### EU

On 15 April 2024, Directive ([EU](#)) 2024/927 amending AIFMD 2011/61/EU and the UCITS Directive 2009/65/EC relating to delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services and loan origination by alternative investment funds ("AIFs") ("AIFMD II") entered into force. It will have to be transposed by EU member states by 16 April 2026.

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

On 7 May 2024, the European Securities and Markets Authority ("ESMA") published a [call for evidence](#) on the review of the UCITS Eligible Assets Directive ("UCITS EAD"). The objective is to gather information to assess possible risk and benefits of UCITS gaining exposure to various asset classes. Interested parties have been invited to provide their feedback on a range of questions contained in the call for evidence.

## 1.2 Individual Accountability Framework

The Senior Executive Accountability Regime ("SEAR") comes into force from 1 July 2024 (except for non-executive directors, who will be in scope from 1 July 2025). In April 2024 the Central Bank finalised [guidance](#) on the Individual Accountability Framework. The guidance is relevant to all four aspects of the Individual Accountability Framework ("IAF") (SEAR, Fitness and Probity framework, Conduct Standards and the Administrative Sanctions Regime).

The final [Central Bank \(Supervision and Enforcement\) Act 2013 \(Section 48\(1\) \(Senior Executive Accountability Regime\)\) Regulations 2024](#) have also been published and will come into operation on 1 July 2024 (one year later for non-executive directors).

The Central Bank of Ireland ("Central Bank") is to also issue the following shortly:

- IAF Frequently Asked Questions to assist firms in their ongoing implementation of the Framework
- A system "How To" Guide for submitting IAF documentation.

### 1.3 [ELTIF 2.0](#)

On 10 January 2024, Regulation [\(EU\) 2023/606](#) which revised the European Long-Term Investment Fund ("ELTIF") framework, came into effect across the EU. Commonly referred to as "ELTIF 2.0" it aims to make ELTIFs more attractive by removing several regulatory obstacles. The Central Bank's AIF Rulebook includes a new chapter 6 on ELTIF requirements, which provides firms with a framework to facilitate the establishment of Irish ELTIFs.

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

On 19 April 2024, ESMA published an [opinion](#) on regulatory technical standards ("RTS") under ELTIF 2.0. The European Commission ("Commission") informed ESMA in March 2024 that it intended to adopt draft RTS under ELTIF 2.0. In the opinion, ESMA sets out several changes to the amendments proposed by the Commission which cover:

- Redemption policies (including notice periods, liquidity management tools (LMTs), redemption gates and valuation).
- Cost disclosures.
- Disclosure of the rules of the matching mechanism.

ESMA acknowledges that a balance needs to be found between the protection of retail investors and financial stability-related objectives. However, ESMA proposes striking that balance "slightly differently" compared to the Commission. The Commission may adopt the RTS with the amendments it considers relevant, or it may reject them.

### 1.4 [Sustainable Finance Update](#)

On 25 April 2024, the European Parliament [adopted](#) the proposed Regulation on the transparency and integrity of environmental, social and governance ("ESG") rating activities. Given the European elections in June 2024, the earliest the text can be finalised is likely to be September 2024. The Regulation will then be published in the Official Journal of the EU ("OJ") and enter into force 20 days later. It will apply 18 months following its entry into force.

On 14 May 2024, ESMA published a [final report](#) setting out its draft guidelines on funds' names using ESG or sustainability-related terms. Among other things, the guidelines:

- Establish that to be able to use these terms, a minimum threshold of 80% of investments should be used to meet environmental, social characteristics or sustainable investment objectives.
- Apply exclusion criteria for different terms used in fund names: environmental, impact and sustainability-related terms and transition, social and governance-related terms.
- Specify further criteria where terms are used in combination, for use of transition, sustainability and impact-related terms and for funds designating an index as a reference benchmark.

The guidelines will now be translated and will apply three months after publication of the translations. A transitional period for funds existing before the application date will be six months after that date. New funds created after the application date should apply the guidelines immediately in respect of those funds.

The European Supervisory Authorities (European Banking Authority ("EBA"), EIOPA and ESMA ("ESAs")) on 4 June 2024 published their [final reports](#) on greenwashing in the financial sector. In their reports they reiterate the common high-level understanding of greenwashing as a practice which may be misleading to consumers, investors, or other market participants. Each ESA provides a stocktake of the current supervisory response to greenwashing risks under their remit and notes that national competent authorities ("NCAs") are taking steps in the supervision of sustainability-related claims.

The reports also acknowledge that addressing greenwashing requires a global response, involving close cooperation among financial supervisors and the development of interoperable standards for sustainability disclosures.

On 18 June 2024, the ESAs published a [joint opinion](#) on the assessment of the Sustainable Finance Disclosure Regulation (EU) 2019/2088 ("SFDR"). The recommendations include the following:

- The Commission could consider the introduction of a product classification system, based on regulatory categories or sustainability indicators to help consumers navigate the broad selection of sustainable products.
- The categories should be simple with clear objective criteria or thresholds, to identify which category the product falls into. The ESAs encourage, at least, categories of "sustainability" and "transition".
- A sustainability indicator could refer to environmental sustainability, social sustainability or both, illustrating to investors the sustainability features of a product in a scale.
- Options for product categorisation and sustainability indicators should be considered. With clear product categories and sustainability indicators, sustainability disclosures would not need to be as extensive.
- The Commission should ensure that sustainability disclosures cater to different investor needs.
- The Commission could reflect on whether to include other products within scope of SFDR to ensure harmonised disclosures for both products currently in scope and any other products that could be brought within scope.

## 1.5 AML/CTF Developments

On 14 June 2024, the Council of the EU [agreed](#) its position on an EU law that sets minimum standards for the definition and sanctioning of corruption offences, preventive measures and rules for more effective investigation and prosecution. The new directive brings together for the first time in one legal act rules on corruption in the public and private sectors, obliging Member States to criminalise the same acts of corruption and define these acts in the same manner. The Council can now agree a final legislative text with the European Parliament.

On 19 June 2024, the Regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing ([EU 2024/1624](#) ("AML Regulation")), the Regulation establishing the new Anti-Money Laundering Authority ("AMLA") ([EU 2024/1620](#) ("AMLA Regulation")) and the Sixth Money Laundering Directive ([EU 2024/1640](#) ("MLD6")) were published in the OJ.

MLD6 and the AML Regulation both enter into force on 9 July 2024. The AML Regulation will apply from 10 July 2027 (except for certain obliged entities). Member states will have two years to transpose some parts of MLD6 and three years for others.

The AMLA Regulation entered into force on 26 June 2024 and will mostly apply from 1 July 2025, except for certain provisions relating to developing guidance/standards and so on. AMLA will be based in Frankfurt and is to start operations in mid-2025. It will have direct and indirect supervisory powers over high-risk obliged entities in the financial sector.

This new AML/CFT reform package will affect EU financial services providers and other obliged entities. Most of the new framework is set out in the "single rulebook" AML Regulation which harmonises AML rules for the first time throughout the EU. It extends the rules to new obliged entities, such as most of the crypto-sector, luxury goods traders and football clubs and agents. It also sets tighter due diligence requirements, regulates beneficial ownership and sets a limit of €10,000 to cash payments, among other things.

MLD6 deals with the management of the beneficial ownership framework and the bank account registries framework; the requirement for a single access point to information on real estate; the responsibilities of financial intelligence units; the potential to bring additional sectors into the scope of the single rulebook; carrying out national risk assessments; and the role of NCAs.

On 26 June 2024, the EBA welcomed the new AML/CFT reform package and set out its AML and CFT priorities for 2024/25. These relate to:

- Developing a methodology for selecting financial institutions for direct EU-level AML and CFT supervision.
- Developing a common risk assessment methodology.
- Establishing the necessary information to carry out customer due diligence.
- Identifying criteria to determine the seriousness of a breach of an AML or CTF provision.

## 1.6 Cross Border Notifications under AIFMD and UCITS Directive

On 14 April 2024, the following regulations supplementing the UCITS Directive and AIFMD as regards notification to national competent authorities ("NCAs") came into force and apply from the dates set out below:

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

cross-border activities of AIFMs and the exchange of information between competent authorities on cross-border notification letters. It applied from 14 April 2024.

## 1.7 EMIR Update

The Regulation on over the counter ("OTC") derivative transactions, central counterparties ("CCPs") and trade repositories ("TRs") ([EU\) 648/2012](#) ("EMIR") is relevant to all Irish and Luxembourg funds trading in financial derivative instruments whether on an exchange or otherwise. UCITS and AIFs are financial counterparties for EMIR purposes and subject to the full scope of EMIR obligations.

On 11 April 2024, ESMA published a [follow-up report](#) to its peer review into supervisory actions aimed at enhancing the quality of data reported under EMIR. In it, ESMA considers the work undertaken by NCAs in Cyprus, France, Germany, Ireland and the Netherlands and concludes that this work has set the path to continue strengthening the regime and increasing the quality of data, although it emphasises that data quality will remain a key area of attention for supervision.

On 25 April 2024, the European Parliament [adopted](#) the proposed Regulation amending EMIR intended to mitigate excessive exposures to third-country CCPs and improve the efficiency of EU clearing markets ("EMIR 3"). It has also adopted the proposed Directive making targeted related amendments to the UCITS Directive, the CRD IV Directive and the Investment Firms Directive to ensure that the EMIR 3 reforms are fully implemented and that they are consistent with other existing legislation. Given the European elections that took place in June 2024, the finalised texts are not expected to be adopted until Q4 2024.

The new reporting requirements under EMIR REFIT came into force from 29 April 2024. For more information, please see [EMIR REFIT – Impact on Irish Investment Funds](#).

## 1.8 Corporate Sustainability Reporting Directive Standards

Commission Delegated Regulation ([EU\) 2023/2772](#) sets out the first set of EU sustainability reporting standards ("ESRS") under the Corporate Sustainability Reporting Directive 2022 ([EU\) 2022/2464](#) ("CSRD") and applies from 1 January 2024 for financial years beginning on or after 1 January 2024. Member States are required to transpose it into their national laws by 6 July 2024. In Ireland the [European Union \(Corporate Sustainability Reporting\) Regulations 2024](#) will come into effect from that date. In Luxembourg, [bill of law n° 8370](#) was submitted to the Luxembourg Parliament on 29 March 2024. It will transpose CSRD into Luxembourg law.

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

On 28 May 2024, Directive ([EU\) 2024/1306](#) came into force. It postpones the adoption of sector-specific sustainability reporting standards for EU companies and general sustainability reporting standards for non-EU companies to 30 June 2026. This will allow companies to focus on the implementation of the first set of ESRS and limit the reporting requirements to a necessary minimum.

It will also allow more time to develop these sector specific sustainability standards and standards for non-EU companies.

## 1.9 Central Bank Annual Report and Annual Performance Statement 2023/2024

On 30 May 2024, the Central Bank published its [Annual Report and Annual Performance Statement 2023 - 2024](#). The Central Bank has identified six key areas of focus for its supervisory work. These include ensuring that firms have robust risk management frameworks, that they are resilient in the face of macroeconomic and financial shocks and that they are serving their customers in a fair and transparent manner. The Central Bank is also looking at how regulated entities are managing risks, such as cybersecurity and data privacy, complying with regulations and so on.

The Central Bank is preparing for the key 2024 regulatory developments including: the EU AI Act; the new EU AML/CFT package; the implementation of the Digital Operational Resilience Act ("DORA") and the Markets in Crypto-assets Regulation ("MiCA"); and the Commission's Retail Investment Strategy.

The Central Bank notes: that the consultation on the Consumer Protection Code closes on 7 June 2024 and anticipates that the final draft of the 'Conduct of Business' Regulations will be published by the close of Q4 2024; it is continuing to implement its IAF; and it is working to address systemic risks in the non-bank financial sector.

## 1.10 GBP-Denominated LDI Funds in Ireland and Luxemburg

### Ireland

The Central Bank on 29 April 2024 [announced](#) the introduction of macroprudential measures for Irish-authorized GBP-denominated Liability Driven Investment ("LDI") funds. Building on the recent consultation - Macroprudential measures for GBP Liability Driven Investment funds - the measures require that GBP-denominated LDI funds authorised in Ireland maintain sufficient resilience to be able to withstand a sudden and adverse shocks to UK interest rates. The Central Bank's objective to codify the yield buffer is to safeguard the resilience of GBP-denominated LDI funds.

### Luxembourg

On 29 April 2024, the CSSF [announced](#) a final set of macroprudential measures with the objective of ensuring the continuing resilience of GBP-denominated LDI funds managed by Luxembourg alternative investment fund managers ("LU AIFMs"). These measures mandate a minimum yield buffer to enhance the funds' resilience. Specifically, GBP-denominated LDI funds must withstand a 300 basis points increase in UK yields without their net asset value ("NAV") turning negative. The yield buffer must be calculated monthly, with the average reported to the CSSF, and while limited flexibility is allowed for the buffer to drop below 300 bps in exceptional cases, this is not expected to be a regular occurrence. LU AIFMs had until 29 July 2024 to ensure compliance for existing funds, with new funds required to be compliant immediately.

### EU

On 29 April 2024, ESMA also issued its [advice](#) to the Central Bank and the CSSF on investment restrictions for GBP LDI funds to ensure their resilience. The advice follows the notification from the Central Bank and the CSSF of their intention to impose an investment restriction on AIFMs established in Ireland and Luxembourg and managing GBP-denominated AIFs pursuing a LDI funding strategy.

## 1.11 ESMA Statement on Use of AI in Provision of Retail Investment Services

On 30 May 2024, ESMA published a [public statement](#) on the use of Artificial Intelligence ("AI") in the provision of retail investment services which is intended to provide initial guidance to investment firms using AI, in the light of their obligations under the MiFID II Directive 2014/65/EU and MiFIR.



It discusses areas where AI can be used in investment services, including customer service, provision of investment advice and portfolio management services, compliance, risk management and fraud detection. ESMA then looks at potential risks for firms and clients, including lack of accountability and oversight, lack of transparency, concerns on data privacy and security and issues relating to reliability, quality of training data and algorithmic bias.

The statement provides advice to firms on how to ensure compliance with key MiFID II requirements when using AI tools. These include acting in clients' best interests and transparency, organisational requirements, conduct of business rules and record keeping obligations.

ESMA, with the NCAs, will monitor the evolution of AI and the applicable EU legal framework to determine if further action is needed. For more information please see [AI: Risk and Regulatory Considerations for Irish Regulated Firms](#)

## **1.12 European Commission Consultation on AI in the Financial Sector**

The use of AI in the EU will be regulated by the AI Act, the world's first comprehensive AI law. On 18 June 2024, the Commission published a [targeted consultation](#) on AI in the financial sector to inform Commission services on the concrete application and impact of AI in financial services, considering the development in the different financial services use cases. It is split into three parts and includes questions on the development of AI, specific use cases in finance and on the AI Act related to the financial sector. The deadline for responses is 13 September 2024. Responses are invited from financial firms (in particular) that provide or use AI systems.

## **1.13 ESMA Guidelines on Stress Test Scenarios under the MMF Regulation**

On 3 May 2024, the Central Bank published a [notice of intention](#) in relation to the ESMA Guidelines on stress test scenarios under the MMF Regulation stating that it expects full compliance with the Guidelines from 6 May 2024. The Guidelines apply to NCAs, money market funds ("MMFs") and managers of MMFs as defined in Regulation (EU) 2017/1131 ("MMF Regulation") and establish common reference parameters for the stress test scenarios to be included in the stress tests conducted by MMFs or managers of MMFs under Article 28 of the MMF Regulation.

The Central Bank will, in due course, consult on the incorporation of a provision in the Central Bank UCITS Regulations and AIF Rulebook that all managers of MMFs adhere to the Guidelines.

## **1.14 EU Consultation on Macroprudential Policies for Non-Bank Financial Intermediation**

On 22 May 2024, the Commission issued a [targeted consultation](#) on macroprudential policies for non-bank financial intermediation ("NBFIs") which closes in November 2024.

The aim is to seek stakeholders' view on the adequacy of the macroprudential framework for NBFIs with the intent not to revisit recent legislative agreements. The consultation is split into the following sections:

- Key vulnerabilities and risks stemming from NBFIs.
- Overview of existing macroprudential tools and supervisory architecture in EU legislation (covering products such as open-ended funds ("OEFs"), MMFs and other NBFIs).
- Excessive leverage.
- Monitoring interconnectedness.
- Supervisory coordination and consistency at EU level.

## 1.15 Innovation Sandbox Programme in 2024

The Central Bank on 4 June 2024 [confirmed](#) it will establish an Innovation Sandbox Programme later this year. The programme will provide regulatory advice and support for innovative projects that promote better outcomes for society and the financial system. The announcement follows a three-month public consultation and comes alongside a feedback statement to a consultation on the Central Bank's approach to engagement with innovation in the financial sector. For more information please see [CP156: CBI to Revamp its Financial Services and Fintech Innovation Framework](#)

The Central Bank has outlined the Innovation Sandbox Programme will take a thematic approach, with themes and a call for potential participants to issue in the coming months and the first programme to commence in Quarter 4 2024.

## 1.16 Central Bank Liquidity Management Tools - Thematic Review

The Central Bank issued a Liquidity Management Tools ("LMT") questionnaire to all fund management companies on 31 May 2024. Firms have until 12 July to return the questionnaire. LMTs have been the subject of ongoing debate at both an EU and international level. Gathering this information is an important step for the Central Bank in understanding the extent of LMT usage for the funds sector in Ireland.

## 1.17 UK Overseas Funds Regime Update

The UK Financial Conduct Authority ("FCA") and Treasury issued a joint roadmap on 1 May 2024, setting out the expected timeline for the implementation of the Overseas Funds Regime ("OFR") which will go live later this year.

For an overview of the key milestones and application process for OFR please see, Ireland Update: UK Overseas Funds Regime.

## 1.18 PRIIPs Update

On 12 June 2024, the Council of the EU [agreed](#) its negotiating position on the retail investment package, which consists of the proposed Directive on retail investment protection ("Omnibus Directive") and the proposed Regulation amending the PRIIPs Regulation.

The main changes proposed relate to inducements and value for money in the proposed Directive and include the following:

- The Council has decided to remove the proposed ban on inducements received for execution-only sales as a ban is already in place for independent investment advice and portfolio management with limited exceptions. However, to reinforce the prevention of potential conflicts of interest, it has strengthened the safeguards accompanying all inducements with several measures, including enhanced transparency and disclosure about inducements, and "overarching principles" to be respected when paying or receiving inducements.
- The Council agrees that ESMA and EIOPA should develop EU supervisory benchmarks as part of the value for money framework. However, instead of mandatory benchmarks integrated in firms' product governance processes, they would be a tool designed to help national supervisors detect investments products that fail to offer value for money.
- As benchmarks would not be directly binding on firms, they would be required to compare their investment products to a peer group of other similar investment products in the EU to establish whether their products offer value for money.

The Council's agreement paves the way to starting interinstitutional negotiations.

On 28 June 2024, the ESAs published [updated Q&As](#) on the PRIIPs Regulation and related delegated acts. A new Q&A has been added, under the heading "General topics", on whether foreign exchange (FX) forwards fall within the scope of the PRIIPs Regulation.

## 1.19 Benchmark Regulation Update

On 25 April 2024, the European Parliament published a [legislative resolution](#) on the proposed Regulation amending the Benchmarks Regulation (EU) 2016/1011 ("BMR") as regards the scope of the rules for benchmarks, the use in the Union of benchmarks provided by an administrator located in a third country and certain reporting requirements. The resolution sets out the Parliament's position at first reading on the legislative proposal. In a press release, the Parliament states that, after the June 2024 Parliamentary elections, the new Economic and Monetary Affairs Committee ("ECON") may choose to open negotiations based on the negotiating mandate adopted as the first reading position or to develop a new negotiating mandate.

## 1.20 IFR and IFD Update

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

On 11 April 2024, the EBA published a [final report](#) on guidelines on the application of the group capital test ("GCT") for investment firm groups under IFR. The guidelines establish harmonised criteria on granting use of the GCT under Articles 8(1) and 8(4) of IFR and set objective thresholds and criteria that NCAs should consider in their assessment of the simplicity of the group structure and the significance of the risk posed to clients and the market. They will apply from 1 January 2025. By then, NCAs should ensure that all GCT and lower amount permissions in force comply.

On 3 June 2024, the EBA and ESMA published a [discussion paper](#) on the potential review of the investment firm prudential framework. This consultation is open until 3 September 2024 and covers topics including: the adequacy of the current prudential requirements; an analysis of the existing methodology; and risks not covered by the current framework.

Further, prudential consolidation and a possible extension to crowdfunding and crypto assets service providers are also considered. In this respect, the paper looks at the interaction of IFD/IFR with requirements applicable to UCITS management companies and AIFMs providing MiFID services on an ancillary basis or investment firms providing services related to crypto assets. The paper also covers aspects related to remuneration for investment firms, AIFMs and UCITS management companies, including the scope of application, remuneration policies, the requirements on variable remuneration, their oversight, disclosure and transparency.

A parallel data collection exercise addressed to competent authorities, investment firms and UCITS Management Companies and AIFMs has also been launched.

On 25 June 2024, Delegated Regulation ([EU](#) 2024/1771 containing RTS specifying the details of the scope and methods for prudential consolidation of an investment firm group under IFR was published in the OJ and will enter into force on 15 July 2024. The regulation contains provisions on the following issues under an empowerment in Article 7(5) of IFR:

- the scope of consolidation.
- the methods of consolidation.
- the methodology for the calculation of the own funds requirements in a consolidated situation.
- rules applicable for minority interest and additional Tier 1 and Tier 2 instruments issued by subsidiaries in the context of prudential consolidation.

## 1.21 DORA Update

Regulation (EU) 2022/2554 known as the Digital Operational Resilience Act ("DORA") is in force since 16 January 2023 and will apply from 17 January 2025. It aims to strengthen the IT security of financial entities such as banks, insurance companies and investment firms.

On 31 May 2024, the ESAs published on a webpage templates and tools for a voluntary dry run exercise relating to the registers of information about contractual arrangements with ICT third-party service providers that financial entities must maintain and report under DORA. In Luxembourg the DORA dry run exercise is available on the CSSF's eDesk platform. Under DORA, from 17 January 2025, all financial entities within scope must have a comprehensive register of their contractual arrangements with ICT third-party service providers available at entity, sub-consolidated and consolidated levels. As explained in an accompanying [press release](#), participating financial entities are expected to submit their registers of information to the ESAs through their NCA between 1 July and 30 August 2024.

On 19 June 2024, the following Delegated Regulations supplementing DORA came into force:

- Commission Delegated Regulation (EU) 2024/1502 supplementing DORA by specifying the criteria for the designation of ICT third-party service providers as critical for financial entities.
- Commission Delegated Regulation (EU) 2024/1505 supplementing DORA by determining the amount of the oversight fees to be charged by the lead overseer to critical ICT third-party service providers and the way in which those fees are to be paid.

On 25 June 2024, the following Delegated Regulations supplementing the Regulation on digital operational resilience for the financial sector (EU) 2022/2554 (DORA) were published in the OJ:

- Commission Delegated Regulation (EU) 2024/1772 setting out RTS specifying the criteria for the classification of ICT-related incidents and cyber threats, setting out materiality thresholds and specifying the details of reports of major incidents.
- Commission Delegated Regulation (EU) 2024/1773 setting out RTS specifying the detailed content of the policy regarding contractual arrangements on the use of ICT services supporting critical or important functions provided by ICT third-party service providers.
- Commission Delegated Regulation (EU) 2024/1774 setting out RTS specifying ICT risk management tools, methods, processes and policies and the simplified ICT risk management framework.

They will enter into force from 15 July 2024.

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

## 1.22 EU Securitisation Regulation

On 27 May 2024, the EBA published the [final Guidelines](#) on the criteria for on-balance sheet securitisations to be eligible as simple, transparent and standardised ("STS") securitisations under article 26 of the Securitisation Regulation (EU) 2017/2402. They aim to ensure a consistent approach in the interpretation of the criteria for STS on-balance-sheet securitisations with the 2018 EBA guidance on the STS criteria for asset-backed commercial paper ("ABCP") and non-ABCP securitisations.

On 18 June 2024, the Commission published a [speech](#) given by Mairead McGuinness, European Commissioner for Financial Services, Financial Stability and Capital Markets Union. It notes that the Commission will launch a consultation in the autumn to scale up the EU securitisation market.

On 18 June 2024, Commission Delegated Regulation ([EU](#) 2024/1700) was published in the OJ. It supplements the Securitisation Regulation with regard to RTS specifying, for STS non-ABCP traditional securitisation and for STS on-balance-sheet securitisation, the content, methodologies and presentation of information related to the principal adverse impacts of the assets financed by the underlying exposures. It aims to standardise the type and presentation of information an originator may opt to disclose about the adverse impacts of assets financed by underlying exposures, on the environment and other sustainability factors and comes into force on 8 July 2024.

## 1.23 MiFID II /MiFIR Update

### Ireland

On 1 May 2024, the Central Bank [published](#) three guidance notes for firms seeking authorisation as MiFID investment firms. These include two new guidance documents on the pre-formal application stages of the process - the Preliminary Meeting and the Key Facts Document stages of the authorisation process. The MiFID Investment Firm Authorisation Application Form was updated to reflect changes in regulatory references and legislation and the existing guidance note on completing an application form for authorisation was revised to provide greater clarity on the content required. An application form was created for MiFID Investment Firms who wish to seek a voluntary revocation of license - "Application Form for Withdrawal (Voluntary Revocation) of Authorisation of a MiFID Investment Firm". An accompanying Guidance Note was also published.

### EU

Directive ([EU](#) 2024/790) amending the MiFID II Directive (EU) 2014/65 ("MiFID 3") and Regulation ([EU](#) 2024/791 ("MiFIR 2") amending the Markets in Financial Instruments Regulation (EU) 600/2014 ("MiFIR") as regards enhancing data transparency, removing obstacles to the emergence of consolidated tapes, optimising the trading obligations and prohibiting receiving payment for order flow came into force on 28 March 2024. MiFIR 2 applied immediately in all EU member states. However, member states will have until 29 September 2025 to comply with MiFID 3.

The legislation amends the MiFID II regime to improve access to market data and transparency. MiFIR 2 introduces an EU-wide consolidated tape that brings together market data provided by platforms on which financial instruments are traded in the EU. It also includes a prohibition on receiving payment for order flow, which seeks to phase out the practice whereby brokers receive payments for forwarding client orders to trading platforms. MiFID 3 makes consequential changes to ensure consistency with the amendments to MiFIR.

On 2 May 2024, a [Commission Notice](#) on the interpretation and implementation of MiFIR 2 was published in the OJ. MiFIR 2 inserted a transitional provision in new Article 54(3) to MiFIR. This specified that delegated acts adopted under MiFIR that were applicable before 28 March 2024 will continue to apply until the date of application of new delegated acts reflecting reforms made by MiFIR 2.

On 21 May 2024, ESMA published a [consultation](#) on RTS on non-equity trade transparency, the availability of information on a reasonable commercial basis and reference data under MiFIR. These proposals reflect revisions to MiFIR made by MiFIR 2. The deadline for responses is 28 August 2024.

On 23 May 2024, ESMA published a [consultation](#) on draft technical standards relating to consolidated tape providers and data reporting service providers under MiFIR 2. It closes on 28 August 2024.

On 23 May 2024, ESMA published a [consultation](#) on proposed amendments to certain technical standards for commodity derivatives under MiFID 3. Comments can be made until 23 August 2024.

On 27 May 2024, ESMA published a [report](#) on the results of its 2023 common supervisory action ("CSA") and mystery shopping exercise on the application of the disclosure rules on marketing communications under MiFID II. It sets out ESMA's views on each of the topics considered and the activities reported to it. It identifies several areas of improvements, such as the need for marketing communications to be clearly identifiable as such and to contain a clear and balanced presentation of risks and benefits. ESMA also states that, in cases where products and services are marketed as having "zero cost", they should also include references to any additional fees.

For more information please see, [ESMA Report on MiFID II Marketing Requirements](#).

On 30 May 2024, ESMA published a [public statement](#) on the use of AI in the provision of retail investment services. For more information, please see "ESMA Statement on Use of AI in Provision of Retail Investment Services" above.

On 12 June 2024, the Commission published for consultation a [draft Delegated Regulation](#) supplementing MiFIR as regards OTC derivatives identifying reference data to be used for the purposes of the transparency requirements in Articles 8a(2), 10 and 21 of MiFIR. The deadline for comments is 12 July 2024.

## 1.24 Investment Fund Statistics

### Ireland

The main points to note in the Central Bank's [Q2 2024 statistics](#) issued in May 2024 are as follows:

- The NAVs of Irish-resident funds increased for the sixth successive quarter, by €228bn to €4,319bn, in Q1 2024, driven mainly by positive revaluations of €170bn and transaction inflows of €25bn.
- Equity funds display the most significant NAV increase of €177bn, followed by bond funds which increased by €37bn. These increases continue ongoing trends, reflecting the popularity of passive, index tracking funds such as bond and equity ETFs, when compared to actively managed funds.
- MMFs showed NAV decreases of €5bn which can be primarily attributed to negative revaluations of €9bn.

### Luxembourg

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

- Total net assets held by Luxembourg UCITS, Part II UCIs, SIFs and SICARs (regulated Luxembourg investment funds) amounted to €5,472.493 billion as at 31 May 2024.
- The number of CSSF-regulated Luxembourg investment funds active in the markets totals 3,232.
- Of the 3,232 active Luxembourg investment funds, 2,115 entities adopted an umbrella structure and together have a total of 12,738 sub-funds. The remaining 1,117 are structured as stand-alone funds.
- As at May 2024, there were a total of 13,855 fund units.
- During May 2024, there were more subscriptions than redemptions in both equity funds and fixed-income funds.

In addition, the number of Luxembourg RAIFs reached 2,658 as of 30 June 2024.

## 2 Cross-Border Marketing

For more information on this topic please see our [GRS Market Update Q2 2024](#).

## 3 Tax

### 3.1 New Irish Revenue Tax Guidance on Determining Employment Status

In May 2024, the Irish Revenue Commissioners ("Revenue") published guidance on determining employment status for taxation purposes. The guidance was issued following the major Irish Supreme Court decision in *Revenue Commissioners v Karshan (Midlands) Ltd. t/a Domino's Pizza* [2023] IESC 24 ("Karshan") which held that delivery drivers for a Domino's Pizza franchise are employees for tax purposes and not independent contractors.

The Revenue guidance and the Karshan case show that there is now a very low bar in Ireland for determining that an individual is an employee for tax purposes rather than an independent contractor. This has potentially a major impact on companies because payroll taxes must be applied for employees and employees also have employment law rights.

We recommend that companies review their commercial arrangements with independent contractors based on the new guidance, and if necessary change the classification of their relationships prospectively, and historically if required. In the financial services sector, in our experience there can be certain short term or temporary business arrangements with individuals who provide services, which should now be reviewed to determine if they should be categorised instead as an employment relationship.

For further information, please see the relevant pages on our website ([New Irish Revenue Tax Guidance on Determining Employment Status](#)) or contact your usual Maples contact.

### 3.2 FASTER Directive – Withholding Tax Reform

On 14 May 2024, the Council of the EU [reached agreement](#) on the proposed Directive on faster and safer relief of excess withholding taxes ("FASTER Directive") which aims to improve efficiency and legal certainty for certain withholding tax ("WHT") relief procedures for investors, financial intermediaries and tax authorities.

Currently, procedures and timelines for claiming withholding tax relief can differ significantly between Member States and the proposed FASTER Directive aims to support and facilitate cross-border investment. It will introduce:

- Two fast-track procedures complementing the existing standard refund procedure: Member states must introduce either a "relief at source" system resulting in withholding the correct amount of WHT at the time of payment of dividends or interest or a "quick refund system" resulting in the refund of overpaid WHT within 60 calendar days from the date of payment. Member States can choose which procedure to implement or include a combination of both so that, for instance, the relief at source procedure would only be allowed for low-risk taxpayers while other taxpayers would be required to make a "quick refund" request.
- A common EU digital tax residence certificate ("eTRC") that investors can use to benefit from the FASTER relief procedures. Member states must provide a quick and automated process to issue eTRCs to a natural person or entity resident in their jurisdiction for tax purposes. These certificates are to be issued within 14 calendar days after a request is submitted.

- National registers and standardised reporting obligations for Certified Financial Intermediaries ("CFIs"). CFIs are large institutions such as banks or investment platforms and central securities depositories, which facilitate WHT relief procedures and will be included in national registers as CFIs. Other smaller EU financial intermediaries and non-EU intermediaries can register voluntarily. CFIs will be obliged to report certain information to the relevant tax authorities to identify investors, the entitlement to reduced WHT rates and potentially abusive WHT avoidance schemes. Each CFI is only obliged to report the part of the transaction visible to it.

### **Impact for investment funds**

Collective investment undertakings ("CIUs"), commonly known as investment funds, stand to benefit significantly from the FASTER Directive. CIUs often invest in a diversified portfolio that includes foreign income-generating assets. As a result, they are frequently subject to WHT by the source countries where the income originates. The FASTER Directive would facilitate a more uniform and expedited mechanism for these funds to recover WHT or double taxation, thereby improving their operational efficiency and potentially enhancing returns for investors.

Where investors invest through CIUs, the FASTER Directive includes special provisions where CIUs or their investors may be entitled to relief but are not the registered owner because the underlying securities are held by a different legal person or by a fiscally transparent CIU. These provisions ensure that legitimate investors such as certain CIUs or their investors have access to the fast-track procedures.

Under the FASTER Directive member states can selectively exclude certain claims from the fast-track procedures. The list of excluded claims includes an exemption for dividend payments exceeding a threshold of €100,000 per registered owner per payment date. However, exemptions from this threshold may be granted to regulated CIUs (for example, UCITS AIFs) which are subject to stringent regulatory oversight and internal controls, minimising the risk of tax fraud and abuse.

CFIs are key in upholding the integrity of relief procedures for excess WHT and must verify the eligibility of investors seeking relief. Further, CFIs will be required to adhere to prescribed procedures where the registered owner differs from the entitled party for tax relief, particularly in indirect investment scenarios involving CIUs. In these cases, CFIs remain accountable for fulfilling due diligence requirements and may face liability for any tax losses incurred. These provisions impose additional compliance burdens on CFIs as they have to comply with the new registration requirements as well as having new reporting obligations which means setting up new processes, collecting data, adapting IT systems and so on.

Once the EU legislative process is completed, member states will have to transpose the FASTER Directive into national legislation by 31 December 2028, with the rules taking effect by 1 January 2030.

The FASTER Directive represents a significant step forward in the EU's efforts to foster a more integrated and efficient capital market. For CIUs it promises to alleviate the tax-related administrative burdens and financial inefficiencies associated with cross-border investment activities. By ensuring a smoother and more predictable process for reclaiming excess withholding taxes, the FASTER Directive could enhance the attractiveness of the EU as a single market for investment funds, ultimately benefiting the broader economy. However, the practical implications will depend on the details of its final text and the commitment of EU member states to its effective implementation.

### **3.3 Luxembourg: Bill to amend Minimum Net Worth Tax, Taxable Dividend Election and Codification for Redemption of a Class of Shares**



On 23 May 2024, the Luxembourg government introduced a draft law and draft Grand Ducal regulation focusing on, inter alia, three key areas: clarifying the tax treatment of a redemption of a class of shares; updating the minimum net worth tax ("NWT") brackets; and allowing taxpayers to waive partial exemptions on dividends.

The new draft law will specify the conditions allowing for a redemption of a class of shares to be considered as a partial liquidation for Luxembourg tax purposes and therefore not subject to withholding tax, subject to the following conditions all being fulfilled:

- a) the redeemed class of shares must be cancelled within six months of redemption;
- b) the relevant shares were issued at incorporation or during a capital increase;
- c) each class of shares has distinct economic rights (defined in the articles of incorporation) such as: preferential dividends, exclusive profit rights for a determined period, or return linked to performance of directly/indirectly held assets or activities; and
- d) the redemption price reflects the "fair market value" (arm's length standard) based on provisions found in the articles of incorporation (or a reference in a document referred to in the articles of incorporation).

The draft law proposes new simplified minimum NWT brackets based on total assets on the taxpayer's balance sheet as follows:

- from €0 to €350,000 liable to €535 of annual minimum NWT;
- more than €350,000 up to €2,000,000 liable to €1,605 of annual minimum NWT; and
- more than €2,000,000 subject to annual minimum NWT of €4,815 (new maximum amount down from the former maximum of €32,100).

The draft law also provides that Luxembourg taxpayers can elect to waive the exemption applicable to dividends and capital gains. The legislative notes state the purpose of such waiver is to allow taxpayers to better manage their losses considering the 17-year limit on tax loss carry-forwards. The taxpayer must elect to waive these exemptions annually. However, only taxpayers with shareholdings qualifying for the minimum euro amount acquisition value thresholds of €1.2 million for dividends and €6 million for capital gains can make such an election (i.e. the alternative test of minimum 10% ownership threshold is excluded from the waiver possibility).

### **3.4 Luxembourg: Proposed Bill Clarifying GloBE Rules**

On 12 June 2024, the Luxembourg coalition government introduced a draft law to amend Luxembourg's GloBE Rules, which impact, inter alia, the Income Inclusion Rule ("IRR"), Undertaxed Profits Rule ("UTPR") and Qualified Domestic Top-up Tax ("QDMTT"). The draft law includes recent administrative guidance from the Organisation for Economic Co-operation and Development ("OECD") and clarifies the interpretation of key provisions of the GloBE Rules particularly with respect to Luxembourg funds.

For a comprehensive summary of the GloBE Rules, please see the Maples Luxembourg Update as found in the [Tax Section of the 2023 Global Legal Insights, Luxembourg Section](#), page 77. Among others, the draft law clarifies that Luxembourg funds exempted from preparing consolidated accounts should not be at risk of potential application of the "deemed consolidation" rules.

Additionally, the draft law proposes to characterise holding companies or SPVs as "excluded entities" that are owned by an investment fund or a real estate investment vehicle, which is not considered an ultimate parent entity solely because such investment vehicle is not required to prepare consolidated accounts, though such entities may still be included for purposes of calculating the minimum €750,000,000 threshold for application of the GloBE Rules.

The draft law also contains provisions addressing the definition of revenue, the QDMTT safe harbour, reinsurance reserves, operational leasing and functional currency considerations under the QDMTT.

On the other hand, the OECD's recent administrative guidance on securitisation vehicles and QDMTT is not included in the draft law's provision.

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# About the Maples Group

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

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