



MAPLES
GROUP

Funds & Investment Management Update – Ireland and Luxembourg

Quarterly Update | January – March 2020

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1 Legal & Regulatory

1.1 UCITS Update

There have been a number of developments over the quarter:

Ireland

UCITS index confirmation

In January 2020 the Central Bank of Ireland ("Central Bank") relaxed its requirements on index confirmations in the context of both pre-and post-authorisation processes in circumstances where a UCITS proposes to use, or is using, a financial index for investment or efficient portfolio management purposes. Its July 2019 [UCITS Financial Indices guidance](#) outlines the circumstances where index confirmation or certification would be required. However this guidance caused some confusion, therefore further clarification was sought on the pre-and post-authorisation confirmation process.

The Central Bank has clarified that:

- At the fund authorisation stage it requires a confirmation where an index is required to be referenced specifically within the fund's prospectus (and certification of the index is not required). It is for the Responsible Person to determine whether a confirmation or a certification is relevant to the index in question;
- A post-authorisation confirmation will only be required where an index that required confirmation as part of the initial authorisation process (i.e. an index referenced directly in the fund's prospectus) is changed; and
- Where an index requires certification, the UCITS, at all times, can only gain exposure to that index after the submission of the relevant certification to the Central Bank.

Central Bank Q&A

On 29 January 2020 the Central Bank issued a new [UCITS Q&A](#) which gives guidance on the asset suitability review process for new UCITS applications in relation to investments by UCITS in contracts for difference ("CFDs"), collateralised loan obligations ("CLOs"), contingent convertible securities or CoCos and binary options. The new Q&A (ID1094) outlines the Central Bank's approach whereby a UCITS proposes to invest in CFDs, CLOs, CoCos or binary options and how that UCITS may be subject to enhanced scrutiny at the authorisation phase with a view to ensuring that the proposal is appropriate, taking into account the overall portfolio of assets that is proposed for the UCITS.

For more information see our client update, [CBI Enhances Asset Suitability Review for New UCITS Applications](#)

Luxembourg

UCITS KIIDs and the use of benchmarks

On 27 January 2020 the Commission de Surveillance du Secteur Financier ("CSSF") issued a [press release](#) on the specific disclosures to be made in UCITS KIIDs on the use of benchmarks by such UCITS. It was a reminder to UCITS and their management companies to integrate the information required pursuant to the European Securities and Markets Authority's ("ESMA's") [Q&A](#) on the application of the UCITS Directive.

The CSSF indicated that UCITS will need to ensure that the disclosures on the use of benchmarks by a UCITS are aligned with the disclosures made in the updated KIIDs (as of 19 February 2020). In addition, such alignment must be undertaken, if necessary, at the next prospectus update or by the end of 2020 at the latest. The review must take into account the new requirements in question 8 of ESMA's Q&A, particularly:

- Whether the UCITS is “actively” or “passively” managed;
- The indication of the benchmark index (or indices) the UCITS is tracking or is making reference to; and
- The disclosure on the use of the benchmark (e.g. outperformance objective, performance comparison, risk limitation, definition of investment universe), the degree of freedom from the benchmark and the past performance against the benchmark when the investment approach of the UCITS includes or implies a reference to a benchmark.

For more information see our client update, [KIID Review Required in Light of New ESMA Requirements around Benchmark Disclosures](#)

CSSF FAQ

On 10 March 2020 the CSSF published an updated [FAQ](#) concerning the Luxembourg law of 17 December 2010 on undertakings for collective investment to reflect two new FAQ on the disclosure of performance, investment managers' and investment advisors' fees to UCITS investors.

In line with existing CSSF practice, the FAQ confirmed that a performance fee, which is payable out of the assets of a UCITS, together with the identity of the recipient of the performance fee must be disclosed in the prospectus. The CSSF also specified that the performance fee model must be disclosed in the prospectus. In addition, the existence of any performance fee sharing arrangement with any investment advisor contractually linked to the UCITS must be disclosed. This documents in writing the long-standing administrative practice of the CSSF on performance fees.

The CSSF also specified that: (i) where a service fee is paid directly out of the assets of a UCITS to an investment manager, and any investment advisor contractually linked to the UCITS, the method of calculation or the rate of the fee to each fee recipient must be disclosed in the prospectus; and (ii) if the recipient of an investment management/advisory fee also receives remuneration for services not directly linked to investment management/advice (such as distribution or other ancillary services), the remuneration for such ancillary services must be disclosed separately.

The CSSF also clarified the requirements applicable to “all-in” fees and confirms that the scope and nature of such “all-in” fee must be clearly stated in the prospectus.

EU

Liquidity review

On 30 January 2020 ESMA launched a [Common Supervisory Action](#) ("CSA") with national competent authorities ("NCAs") on the supervision of UCITS managers' liquidity risk management across the EU to be conducted during 2020. NCAs will assess whether market participants in their jurisdictions adhere to the liquidity risk management rules in the UCITS regulatory framework in their day-to-day business. In the first stage of the CSA, NCAs will request quantitative data from a large majority of the UCITS managers based in their respective member states, to get an overview of the supervisory risks faced. In the second stage, NCAs will carry out more in-depth supervisory analyses on a sample of UCITS managers and UCITS.

For more information see our client update, [UCITS Liquidity Review: ESMA and NCAs](#)

The Central Bank contacted certain Irish UCITS fund management companies and Irish UCITS on 6 February 2020 to advise that a detailed UCITS liquidity questionnaire will become available for completion in March 2020. This is stage 1 of the CSA.

On 10 February 2020 the CSSF launched the first stage of the CSA by asking certain Luxembourg UCITS managers to complete a dedicated questionnaire on the CSSF's [eDesk Portal](#) by 13 March 2020.

1.2 AIFMD Update

There have been a number of recent developments in relation to the Alternative Investment Fund Managers Directive [2011/61/EU](#) ("AIFMD"):

On 5 February 2020 the European Systemic Risk Board ("ESRB") published a [letter](#) to the Director General for Financial Stability, Financial Services and Capital Markets Union at the European Commission on AIFMD framework shortcomings. It identified areas for improvement in AIFMD reporting, which could enhance NCAs' abilities to monitor vulnerabilities in investment funds. Funds not reporting or possessing a legal entity identifier ("LEI") and inaccurate classifications are specifically raised. It also raises points on information about funds' interconnectedness, leverage and liquidity risk.

The ESRB explains that it has identified the operationalisation of existing macroprudential policy instruments as a priority. It is of the view that NCAs could benefit from an operational framework for suspension of redemption in the public interest. The letter refers to the International Organization of Securities Commissions ("IOSCO") February 2018 recommendations on fund liquidity. The ESRB notes that work on the recommendations is ongoing and is aimed at developing a macroprudential framework for investment funds and that the Commission will report on its AIFMD review of in early 2020.

On 27 March 2020 ESMA published a [consultation paper](#) on guidelines under Article 25 of AIFMD. Article 25 provides for NCAs to identify the extent to which the use of leverage in the AIF sector contributes to the build-up of systemic risk in the financial system, risks of disorderly markets, or risks to the long-term growth of the economy. The consultation closes on 1 September 2020. The guidelines in Annex II to the paper will apply to NCAs and focus on:

- How the leverage-related systemic risk assessment should be conducted; and
- When leverage limits might be imposed.

1.3 COVID-19 – Central Bank, CSSF and ESMA Statements

Ireland

On 4 March 2020 the Central Bank issued a [statement](#) on COVID-19 indicating that it is monitoring developments to assess the impact on the economy and expects that regulated firms should have appropriate contingency plans in place.

Where potentially affected business areas are outsourced firms must ensure that they have adequate governance and risk management processes to address outsourcing risks. Firms also must be aware of their employment law obligations to employees to maintain a safe place of work.

Luxembourg

COVID-19 FAQ

The CSSF published its first COVID-19 [FAQ](#) on 3 March 2020 and has regularly updated it.

There are currently 13 FAQ in order to address, without limitation, the following: (i) recommended minimum IT security requirements for remote access; (ii) the application of the swing factor mechanism; (iii) waiver of prior authorisation/notification for cloud based outsourcing; (iv) extension of deadlines for the reports to be submitted by undertakings for collective investment, specialised investment funds (“SIFs”), investment companies in risk capital (“SICARs”), investment fund managers, pension funds and securitisation undertakings; (v) extension of deadlines for the prudential reporting tables to be submitted by specialised professionals of the financial sector; (vi) extension of deadlines for the reports to be submitted by investment firms; and (vii) the CSSF’s policy on banks’ distribution policies aimed at remunerating shareholders.

The CSSF has published a range of other notifications and press releases relating to COVID-19 and on 18 March 2020 the Government of Luxembourg declared a state of emergency under Article 32(4) of the Luxembourg Constitution, allowing the implementation of emergency measures. These measures, which were introduced on 20 March 2020, allow Luxembourg companies to maintain and facilitate good governance, notwithstanding the challenges caused by the COVID-19 pandemic and while respecting social distancing protocols. All the measures apply with immediate effect to all types of Luxembourg entities.

The measures include: (i) notwithstanding any provision to the contrary in the articles of association, permitting the governing bodies of any Luxembourg company to hold their meetings, in particular, meetings of shareholders and boards of directors/managers, without requiring the physical presence of their members; (ii) suspending the surcharge for the late filing of annual accounts for an additional four months; and (iii) using electronic signatures as a potential alternative for the execution of all documents, with the exception of acts/documents/deeds that require notarisation in Luxembourg.

For more information see our client update, [COVID-19 Luxembourg Update: Exceptional Measures Applicable to Companies](#)

EU

On 11 March 2020 ESMA made the [following recommendations](#) to financial market participants:

- Business continuity planning – financial market participants should be ready to apply their contingency plans to ensure operational continuity in line with regulatory obligations;
- Market disclosure – issuers should disclose as soon as possible any relevant significant information concerning the impacts of COVID-19 on their fundamentals, prospects or financial situation in accordance with their transparency obligations under the Market Abuse Regulation;
- Financial reporting – issuers should provide transparency on the actual and potential impacts of COVID-19, to the extent possible based on both a qualitative and quantitative assessment on their business activities, financial situation and economic performance in their 2019 year-end financial report if these have not yet been finalised or otherwise in their interim financial reporting disclosures; and
- Fund management – asset managers should continue to apply the requirements on risk management and react accordingly.

1.4 CSSF Swing Price Mechanism FAQ Update

On 20 March 2020, in response to the COVID-19 pandemic, the CSSF issued a [press release](#) and an updated [FAQ](#) on the swing pricing mechanism to reflect three new questions and

relevant responses which will be of interest to Luxembourg regulated UCITS, Part II UCI and SIFs ("UCI") in light of the current market volatility:

- Question 1 confirms that UCIs may increase the swing factor to be applied on the net asset value up to the maximum level in the prospectus without prior notification to the CSSF;
- Question 2 clarifies that UCIs may increase the applied swing factor beyond the maximum swing factor in the prospectus in certain situations; and
- Question 3 notes that, on the extent to which the applied swing factor may be increased beyond the maximum swing factor disclosed in the prospectus, the maximum swing factor usually varies between 1% and 3%. It states that the maximum swing factor may be raised beyond this on a temporary basis provided that certain conditions are met. The CSSF may ask the UCI to justify, on an ex-post basis, the level of the swing factor applied and to provide documentary evidence that such factor was at any time representative of the prevailing market conditions.

1.5 Shareholders' Rights Directive II

The Shareholders' Rights Directive [EU/2017/828](#) ("SRD II") which amends the existing Shareholders' Rights Directive 2007/36/EC ("SRD") was due to be transposed by all EU Member States by 10 June 2019. SRD II impacts institutional investors (insurers and pension funds) and asset managers (MiFID firms providing portfolio management services, AIFMs, UCITS management companies and self-managed UCITS) by imposing an obligation to provide greater transparency on their shareholder engagement policy, on how they engage with companies they or their clients invest in and on their equity strategy.

The [European Union \(Shareholders' Rights\) Regulations 2020](#) transpose SRD II into Irish law and came into effect on 30 March 2020.

Asset managers are required to put in place a policy describing, among other things, how it integrates shareholder engagement into its investment strategy and how it monitors the companies it invests in on matters such as strategy, financial and non-financial performance, risk, exercise of voting and other rights attached to shares and conflicts. Also an asset manager must publicly disclose how the shareholder engagement policy has been implemented and give a general description of voting behaviour and how votes were cast (excluding insignificant votes due to size of holding or subject matter) annually.

For more information see our client update, [SRD II Comes into Effect in Ireland](#)

Luxembourg implemented SRD II into their domestic law on 1 August 2019.

1.6 New PCF Designations for each Designated Person Role Proposed

On 25 February 2020 the Central Bank issued a [Notice of Intention](#) proposing for the persons responsible for the six key management functions of a UCITS management company or AIFM ("Designated Persons") to be separately classified Pre-Approved Controlled Functions ("PCFs") under its fitness and probity regime. Currently all Designated Persons are classed as PCF-39. It is proposed that there will be a separate designation for each of the six specific key management functions.

The Central Bank has indicated that this will not have any impact on persons holding existing Designated Person positions – with the exception of a requirement for relevant firms to make a confirmation that it is satisfied that all current Designated Person/PCF39 function holders meet the fitness and probity standards. This confirmation will need to be provided to the Central Bank

within six weeks of the point in time that the regime is updated. Comments on the proposal were accepted until 26 March 2020.

Delineating the key management functions in this way may assist the Central Bank in gathering data on Designated Persons relative to specific key management functions. The Central Bank also proposes to introduce a new Chief Information Officer PCF designation ("PCF-49") for the most senior individual at a firm with responsibility for IT matters.

See also, [New CBI PCF Designations for each Designated Person Role](#)

1.7 AML Update

Ireland

On 6 March 2020 the Central Bank confirmed that they will be responsible for establishing a central Beneficial Ownership Register for credit unions and certain types of funds which is due to be introduced shortly. Funds that will be included on this register are ICAVs registered under the Irish Collective Asset-management Vehicle Act 2015 and unit trust schemes registered under the Unit Trust Act 1990.

The [General Scheme of the Criminal Justice \(Money Laundering and Terrorist Financing\) \(Amendment\) Bill 2019](#) which will implement the Fifth Money Laundering Directive [EU/2018/843](#) ("MLD5") in Ireland was published in January 2019 but has not progressed any further. The deadline for transposition into national law was 10 January 2020.

Luxembourg

MLD5 implementation

Luxembourg implemented the remaining provisions of MLD5 into domestic law on 30 March 2020. The law of [25 March 2020](#) amends the [law of 12 November 2004 on the fight against money laundering and terrorist financing](#) ("AML Law") and:

- Extends the category "financial institutions" to include all persons subject to AML/CFT supervision of the CSSF;
- Extends the scope of the AML Law to include, among others, virtual asset service providers and providers of custodial or administrative services of virtual assets;
- Permits identification and verification of a customer's identity to occur on the basis of electronic identification means or any other secure remote or electronic identification process that is regulated, recognised, approved, and accepted by the relevant national authorities;
- Limits the use of prepaid cards;
- Strengthens and improves the application of enhanced due diligence measures for business relationships and transactions to and from high-risk countries;
- Aligns and harmonises the powers of the supervisory authorities and self-regulatory bodies;
- Enhances the supervisory powers of self-regulatory bodies; and
- Strengthens the cooperation between the Luxembourg supervisory authorities and their overseas counterparts.

Virtual assets and virtual asset service providers

The CSSF issued a [press release](#) on virtual assets and virtual asset service providers on 15 January 2020 following the Financial Action Task Force ("FATF") adoption of the interpretive

note to FATF Recommendation 15 on New Technologies. It highlights a number of items, including:

- MLD5 has extended the scope of application of the Fourth Money Laundering Directive [EU/2015/849](#) to include virtual asset service providers and custodian wallet providers;
- [Bill of law n° 7467](#) (which was published in the Official Journal of Luxembourg as the law of 25 March 2020 (see above for further information)) will also extend the scope of the AML Law to include, among others, virtual asset service providers and custodian wallet providers;
- Bill of law n° 7467 will be broader in scope than MLD5 and will align with the larger scope foreseen by FATF requirements;
- Entities carrying out one or more of the following activities on behalf or in the name of their customer will fall within the scope of bill of law n° 7467:
 - Exchange between virtual assets and fiat currencies, including between virtual currencies and fiat currencies;
 - Exchange between one or more forms of virtual assets;
 - Transfer of virtual assets;
 - Safekeeping or administration of virtual assets or instruments enabling control over virtual assets, including custodian wallet services; and
 - Participation in and provision of financial services related to an issuer's offer to or the sale of virtual assets.
- A second bill of law, [bill of law n° 7512](#), (which was published in the Official Journal of Luxembourg as the [law of 25 March 2020](#)) will introduce a new framework for AML/CFT supervision of virtual asset service providers active in Luxembourg into the AML Law.

Money laundering and financing of terrorism risk analysis

On 17 January 2020 the CSSF published its first [money laundering/financing of terrorism risk analysis](#) on the collective investment sector. It is based on the outcome of, amongst other supranational assessments, the [National Risk Assessment for Luxembourg](#), and produced in consultation with representatives of ALFI, ALCO, ABBL, LPEA, LUXREAL, IRE, Le Barreau and the Financial Intelligence Unit as members of the Expert Working Group AML OPC chaired by the CSSF.

The purpose was to develop a more detailed and systematic perspective on the risks faced by the collective investment sector. It covers inherent risk and residual risk in the collective investment sector and puts these risks in context of the operations and lifecycle of collective investments and the roles performed by various service providers. It also details observed best practices, common findings from supervision and outlines recommendations, which the targeted entities should adopt. The CSSF expects supervised entities involved in the collective investment sector to reflect the findings in their frameworks to ensure they remain appropriate to effectively mitigate money laundering ("ML") and terrorist financing ("TF") risks. In addition, the CSSF will monitor the entities' adherence to the recommendations as part of their supervisory activities.

CSSF survey

In a [circular letter](#) issued on 31 January 2020, the CSSF clarified that a completed survey on the fight against money laundering and terrorist financing must be filed through its eDesk Portal by 15 March 2020. However, in a [circular letter](#) issued on 17 March 2020, the CSSF

acknowledged delays have occurred as the survey must be filed through its eDesk Portal (which requires registration) as a result of the COVID-19 pandemic. Therefore it extended the deadline to 10 April 2020.

In the same circular letter, the CSSF reminded specialised professionals of the financial sector, investment fund managers and investment firms of their obligations under AML Law and warned that any failure to submit a completed survey may result in the imposition of administrative sanctions.

For more information see our [Q4 2019 quarterly update](#)

EU and International

Since 1 January 2020 the European Banking Authority ("EBA") has had a legal duty to lead, coordinate and monitor the AML and CTF efforts of all EU financial services providers and competent authorities and to contribute to preventing the use of the financial system for the purposes of ML and TF. On 5 February 2020 it issued a [public consultation](#) on revised money ML/TF risk factors guidelines which runs until 5 May 2020. The EBA will repeal the June 2017 guidelines once the revisions are finalised.

These guidelines, which are addressed to both financial institutions and supervisors, set out factors that institutions should consider when assessing the ML/TF risk associated with a business relationship or occasional transaction. They also provide guidance on how financial institutions can adjust their customer due diligence ("CDD") measures to mitigate the ML/TF risk they have identified. Finally, they support competent authorities' AML/CFT supervision efforts when assessing the adequacy of firms' risk assessments and AML/CFT policies. They propose key changes, including new guidance on compliance with the provisions on enhanced customer due diligence related to high-risk third countries. They also provide more details on terrorist financing risk factors and CDD measures including on the identification of the beneficial owner, the use of innovative solutions to identify and verify the customers' identity and set regulatory expectations of firms' business-wide and individual ML/TF risk assessments.

On 12 February 2020 the European Commission published, for consultation, a [roadmap](#) for a proposed policy communication on an action plan to enhance the EU's AML framework to identify the areas where further action is needed at EU level to achieve a comprehensive and effective framework.

On 6 March 2020 FATF published [guidance](#) on digital identity. It aims to clarify how digital ID systems, such as biometric technology, the use of smart phones and distributed ledger technology can be used for CDD in order to help governments, financial institutions and others apply a risk-based approach to the use of digital ID for CDD.

FATF's private sector business [bulletin](#) (published on 24 March 2020) states that it has been monitoring the impact of its new AML and CTF standards on virtual assets (cryptoassets), including the progress made towards implementing the "travel rule". This rule requires transparency about the originator and beneficiary of payments. FATF plans to report to the G20, in July 2020, on its analysis of the money laundering and terrorist financing risks associated with stablecoins and the application of its standards to them.

1.8 Thematic Review of Cyber Security - Key Findings

The Central Bank recently completed a thematic inspection on cybersecurity risk in the asset management sector. On 10 March 2020 it issued an industry letter outlining the key findings identified during the inspection process and, in each case, a summary of the measures in the relevant area that the Central Bank expects firms to take.

For more information see our client update, [CBI Thematic Review of Cyber Security - Key Findings](#)

1.9 Gender Diversity Statistics in the Asset Management Sector

In March 2020 the Central Bank published gender diversity statistics for director and senior management roles in the Irish asset management sector. Key figures to note:

- 2019 applications for new director appointments in the area of asset management - 76% male / 24% female; and
- In what it described as "higher impact" firms in the asset management sector, the overall picture at PCF holder and director level is as follows:

	Male	Female
PCF Holders	87%	13%
Directors	85%	15%

1.10 EU Money Market Fund Regulation Filings and Stress Test Guidelines

Ireland

The Central Bank advised Irish Funds on 4 February 2020 that the filing of the first reporting under the EU Money Market Fund Regulation [EU/2017/1131](#) ("MMFR") is deferred from April 2020 until July 2020 as more time is required in order to prepare the reporting infrastructure. However ESMA [announced](#) on 31 March 2020 that the first reports by MMF managers under the MMFR should be submitted in September 2020.

This change in timeline comes as there will be an update to the XML schemas to be used for the reporting, and MMF managers will need additional time to comply with the reporting obligation. Following feedback received by market participants after the publication of this first version of the XML schema (v.1.0) ESMA has decided to implement amendments on the XML schema and reporting instructions in a new version, v1.1 which will be published shortly on its website. That means that MMF managers will have to report in September 2020 quarterly reports for both the Q1 and Q2 reporting periods.

Stress test guidelines

On 4 March 2020 ESMA [published](#) the official translations of its [guidelines](#) on stress test scenarios produced under Article 28 of the MMFR and published in July 2019. The guidelines establish common reference parameters of the stress test scenarios that MMFs or MMF managers should include in their stress scenario (the results of which should be sent using the reporting template to the relevant NCA with their first quarterly reports).

The guidelines state that they apply from the date two months after the date of their publication on ESMA's website in all EU official languages. NCAs must notify ESMA whether they comply or intend to comply with the guidelines within this two-month period.

Luxembourg

On 3 February 2020 the CSSF published a [press release](#) to note the publication of three new circulars on MMFs: CSSF circular [20/734](#) on reporting obligations for MMF managers ("Circular 20/734"); CSSF circular [20/735](#) on the ESMA guidelines on stress tests required to be

undertaken by MMF managers ("Circular 20/735"); and CSSF circular [20/736](#) regarding ESMA Guidelines on reporting to competent authorities under Article 37 of MMFR ("Circular 20/736").

CSSF Circular 20/734

Under Article 37 of the MMFR, MMF managers are required to report to national competent authorities on matters such as the type and characteristics of the MMF, portfolio indicators and the results of stress tests. The first such reporting period started on 1 January 2020 and managers will need to submit reports within 30 days of the end of the relevant reporting period, which will be quarterly or yearly depending on the manager's level of assets under management. ESMA has already published guidelines on the Article 37 reporting obligations and Circular 20/734 aims to complement the ESMA guidelines by clarifying technical details that MMF managers need in order to fulfil their reporting obligations. It addresses matters such as the content of certain data fields within the reporting template and the naming convention to be applied to the file submitted to the CSSF.

CSSF Circular 20/735

Under the MMFR, MMFs are required to apply stress testing processes to assess the impact of possible events or changes in economic condition which could have an unfavourable impact on them. In 2018, ESMA published guidelines on MMF stress test scenarios with the aim of establishing common reference parameters for the stress test scenarios required to be conducted. In accordance with the MMFR, these guidelines are updated annually. On 19 July 2019, ESMA published the latest version of the guidelines; updated to now also include common reference stress test scenarios as well as common reference parameters for those scenarios. The purpose of Circular 20/735 is to implement those guidelines into Luxembourg law. As such, all MMFs under the supervision of the CSSF and Luxembourg managers of those MMFs should familiarise themselves with the updated ESMA guidelines.

CSSF Circular 20/736

This implements the guidelines from ESMA on the reporting to competent authorities under Article 37 of the MMFR into Luxembourg regulation applicable to MMFs under the supervision of the CSSF and to Luxembourg MMFs managers.

Following ESMA's announcement on 31 March 2020 the CSSF confirmed by way of derogation from Circular CSSF 20/736, Luxembourg MMF managers may postpone the submission of the quarterly reports for Q1 and Q2 2020 to September 2020.

1.11 Sustainable Finance - The Disclosure Regulation and ESMA Strategy

[Regulation \(EU\) 2019/2088](#) on sustainability-related disclosures in the financial services sector lays down harmonised rules for financial market participants including AIFMs, UCITS management companies and investment firms authorised under MiFID II (providing portfolio management or investment advice) and came into force in December 2019. It provides for transparency with regard to the integration of sustainability risks and the consideration of adverse sustainability impacts in their processes, as well as the provision of sustainability-related information on financial products and, with some exceptions, will apply from 10 March 2021. The European Supervisory Authorities ("ESAs") are developing technical standards on the content, methodology and presentation of information on the disclosure requirements.

For more information see our client update, [New ESG Disclosure Requirements for EU Funds and Asset Managers](#)

On 6 February 2020 ESMA published its [sustainable finance strategy](#) which sets out how it takes into account sustainable business models and integrating environmental, social and

governance ("ESG") related factors across its four activities: the single rulebook, supervisory convergence, direct supervision and risk assessment. Its key priorities include:

- Completing the regulatory framework on transparency obligations arising under the Disclosure Regulation (EU) 2019/2088;
- Including a dedicated chapter on risks related to sustainable finance in its reports on trends, risks and vulnerabilities, starting with its first report of 2020, which ESMA expects to publish in Q1 2020. This chapter will include indicators on green bonds, ESG investing and emission allowance trading;
- Conducting more analysis of financial risk from climate change, including possible climate-related stress testing;
- Fostering supervisory convergence of EU law in the ESG area; and
- Participating in the EU platform on sustainable finance under the proposed Regulation on the establishment of a framework to facilitate sustainable investment ("Taxonomy Regulation"). On 9 March 2020 the EU technical expert group on sustainable finance published its [final report](#) on the taxonomy for sustainable economic activities which sets out: recommendations on the overarching design of the taxonomy; guidance on the obligations for financial market participants and large companies under the taxonomy, including how they can make disclosures and recommendations for the Platform on Sustainable Finance.

1.12 ESMA Consults on Standardised Information to Facilitate Cross-Border Funds Distribution

On 31 March 2020 ESMA launched a [consultation](#) on the standard forms, templates and procedures that NCAs should use to publish information on their websites to facilitate cross-border distribution of funds that closes on 30 June 2020. In particular, the standard information should cover:

- National laws, regulations and administrative provisions governing marketing requirements for AIFs and UCITS and the summaries thereof; and
- Regulatory fees and charges they levy for carrying out their duties on the cross-border activities of fund managers.

ESMA will consider the feedback it receives in order to finalise the implementing technical standards for submission to the European Commission by 2 February 2021.

1.13 Reporting Thresholds of Net Short Positions in EU Securities

On 16 March 2020 ESMA lowered the [reporting notification trigger level](#) under the Short Selling Regulation (EU) 236/2012 ("SSR") for net short positions in securities traded on EU markets from 0.2% to 0.1%. Some points to note:

- Fund level - Where investments are made through collective investment schemes, the assessment is made at fund level (and sub-fund level in the case of umbrella funds);
- Territorial scope: implications for non-EU funds/accounts - The transparency requirements under SSR apply regardless of where the investing entity is located, including in a non-EU member state; and

- Principal trading venue - Shares of a company which are admitted to trading on a trading venue in an EU member state but whose principal trading venue is located ex-EU are exempt from the notification/disclosure requirements in the SSR.

1.14 EMIR Update

The Regulation on over the counter ("OTC") derivative transactions, central counterparties ("CCPs") and trade repositories ([Regulation 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 ("FCs") for EMIR purposes and subject to the full scope of EMIR obligations.

There have been a number of developments over the quarter:

The Central Bank issued the first edition of its [EMIR Q&A](#) on 21 January 2020 setting out answers to queries likely to arise. It replaces its Frequently Asked Questions on EMIR.

On 7 February 2020 ESMA published a [final report](#) on the alignment of derivatives trading obligation ("DTO") under MiFIR with the changes to the scope of the clearing obligation under EMIR introduced by the EMIR Refit Regulation ([EU](#) 2019/834). ESMA recommends that the EMIR Refit Regulation changes to the clearing obligation for both financial counterparties and non-financial counterparties should be replicated in MiFIR. It also recommends that the EMIR Refit Regulation mechanism for temporarily suspending the clearing obligation in certain circumstances should be mirrored in MiFIR in respect of the DTO, with adaptations to the criteria for suspension to the specificities of the DTO. The European Commission must report on ESMA's report by year end.

On 26 February 2020 ISDA® published an industry best practices matrix for reporting under EMIR. These cover 87 data points across 61 reporting fields, including both OTC and exchange-traded derivatives. They aim to improve the accuracy and efficiency of trade reporting and reduce compliance costs and are available to all market participants. This is a cross-trade association initiative developed by the European Fund and Asset Management Association, European Venues and Intermediaries Association, Futures Industry Association, German Investment Funds Association, Global Foreign Exchange Division, ISDA and the Investment Association.

On 26 March 2020 ESMA published a [consultation paper](#) (which closes on 15 June 2020) on post-trade risk reduction ("PTRR") services under the EMIR Refit Regulation. Under EMIR ESMA must report to the European Commission about whether trades that directly result from PTRR services, including portfolio compression, should be exempted from the clearing obligation in Article 4(1). ESMA is looking at the types of PTRR services, their purpose and whether there is a need for the new trades that these may generate to be exempted from the clearing obligation and if an exemption could lead to the risk of some CCPs circumventing that obligation.

On 27 March 2020, Commission Delegated Regulation ([EU](#) 2020/448) which contains regulatory technical standard ("RTS") supplementing EMIR on risk mitigation techniques for OTC derivative contracts, in connection with certain simple, transparent and standardised securitisations for hedging purposes; and Commission Delegated Regulation ([EU](#) 2020/447) supplementing EMIR with regard to RTS on the specification of criteria for establishing the arrangements to adequately mitigate CCP credit risk associated with covered bonds and securitisations were published in the Official Journal of the EU. See "EU Securitisation Regulation" below for more detail on both regulations.

On 27 March 2020 ESMA published a [consultation paper](#) on reporting, data quality, data access and registration of trade repositories under the EMIR Refit Regulation.

1.15 UK - HMRC Consults on Marketing and Overseas Funds Regime

On 11 March 2020 HM Treasury published a [consultation paper](#) on fund marketing and an overseas funds regime ("OFR") which contain the UK government's proposal for a new process to allow investment funds that are domiciled overseas to be marketed and sold to UK investors. It will be based on the principle of equivalence and will introduce two new regimes for retail investment funds and money market funds. The consultation sets out how the OFR will operate including:

- How equivalence determinations will be made;
- The process by which investment funds will be registered and recognised; and
- How the UK regulatory framework on marketing and financial promotions will apply to overseas funds in the OFR.

For more information please see our client update, [HM Treasury Consultation on the Overseas Funds Regime](#)

1.16 PRIIPs Update

The EU Regulation on key information documents ("KIDs") for packaged retail and insurance-based investment products ("PRIIPs") (Regulation [1286/2014/EU](#)) ("PRIIPs KID Regulation") introduced a new pan-European pre-contractual product disclosure document for PRIIPs in EU Member States on 1 January 2018. The KID is a mandatory, three-page A4 information document to be provided to consumers before purchasing a PRIIP.

On 22 January 2020 Insurance Europe published a letter it wrote with the Association of Mutual Insurers and Insurance Co-operatives in Europe ("AMICE"), the European Banking Federation ("EBF") and EFAMA, to the European Commission, raising concerns with the ESAs review of the RTS under PRIIPs KID Regulation. It refers to the [consultation](#) on proposed amendments to Commission Delegated Regulation 2017/653 on KIDs for PRIIPs that closed on 13 January 2020. The letter sets out their concerns on timing, consumer testing, constant changes and ensuring information provided to consumers is meaningful.

On 27 February 2020 the European Commission published a final [report](#) on consumer testing of the KID under the PRIIPs KID Regulation. It sets out the findings from an online consumer testing exercise involving over 7,600 participants in five countries using ten different versions of the KID for three different types of PRIIPs. The versions included potential future performance scenarios, past performance information and illustrative scenarios. Generally, the results suggest that the final investment decision is not affected by the version of the KID. The results of the exercise will feed into the ESA's review of the PRIIPs Delegated Regulation ((EU) 2017/6532) which sets out the content and format of the KID and whether changes to the content and format of the performance scenarios are necessary.

1.17 EU Securitisation Regulation

[Regulation \(EU\) 2017/2402](#) on a general framework for securitisation and creating a specific framework for simple, transparent and standardised ("STS") securitisations ("Securitisation Regulation") and [Regulation \(EU\) 2017/2401](#) amending the Capital Requirements Regulation 575/2013/EU applies to securitisations the securities of which are issued on or after 1 January 2019 or which create new securitisation positions on or after that date.

On 17 January 2020 ESMA published a [consultation paper](#) on draft guidelines on securitisation repository data completeness and consistency thresholds which closes on 13 April 2020. The aim of the proposed guidelines is to help market participants and securitisation repositories

understand ESMA's expected maximum use of "no data options" contained within a securitisation data submission.

On 27 March 2020 Commission Delegated Regulation ([EU](#) 2020/448) amending Commission Delegated Regulation (EU) 2016/2251, which contains RTS supplementing EMIR on risk mitigation techniques for OTC derivative contracts, in connection with certain STS securitisations for hedging purposes, was published in the Official Journal of the EU. It provides that securitisation special purpose entities ("SSPEs"), for OTC derivatives in connection with securitisations that meet the requirements to be classified as STS, will be exempted from posting and collecting initial margins and from posting variation margins.

On 27 March 2020, Commission Delegated Regulation ([EU](#) 2020/447) supplementing EMIR with RTS on the specification of criteria for establishing the arrangements to adequately mitigate CCP credit risk associated with covered bonds and securitisations was also published in the Official Journal of the EU. Article 1 and 2 set out the clearing exemption conditions for OTC derivative contracts that are concluded by covered bond entities in connection with a covered bond and by a SSPE in connection with a securitisation.

Article 3 and 4 amend Commission Delegated Regulation (EU) 2015/2205 and Commission Delegated Regulation (EU) 2016/1178 to take account of the new drafting of Article 4 of EMIR, which includes two of the clearing exemption conditions for covered bonds included in these Delegated Regulations.

Both of the above delegated regulations will enter into force and apply from 16 April 2020.

1.18 **EFAMA and AMIC Report on Managing Fund Liquidity Risk in Europe**

On 22 January 2020 the European Fund and Asset Management Association ("EFAMA") and AMIC updated their [Managing Fund Liquidity Risk in Europe report](#). It outlines the practical liquidity risk management processes which fund management companies put in place when setting up a fund and implement throughout the life of the fund, describes the existing European and international regulatory frameworks, outlines various liquidity management tools and details a number of recommendations.

1.19 **SFTR Reporting Update**

On 6 January 2020 ESMA published its [final report](#), its guidelines on reporting under the Regulation on reporting and transparency of securities financing transactions ("SFTs") (EU) 2015/2365 ("SFTR"), amended SFTR validation rules and a statement on Legal Entity Identifiers or LEIs. The guidelines clarify certain SFTR provisions and will contribute to the reduction of costs along the complete reporting chain - the counterparties that report the data, the trade repositories which put in place the procedures to verify the data, and the authorities which use the data to supervise risks to financial stability. The LEI statement clarifies the expectations on reporting of LEI for issuers of securities used in SFTs as well as the relevant supervisory actions to be carried out by authorities. Finally, ESMA updated the SFTR validation rules to fully align them with the [updated XML schemas](#) published in December 2019 as well as with the above LEI statement.

AIMA wrote a letter to the European Commission and ESMA shortly afterwards seeking clarification about a statement in the ESMA's report that non-EU AIFs with EU-authorized or registered AIFMs are subject to the SFTR reporting obligation. On 10 February 2020 the International Securities Lending Association [published](#) the following confirmations:

- In its [letter](#) dated 7 February 2020) the Commission confirmed that non-EU AIFs (that is, AIFs not established in the EU) are not subject to the reporting obligations in Article 4(1), even if the AIFM is authorised or registered under AIFMD. This is the position except in

respect of SFTs concluded in the course of the operations of an EU branch of the non-EU AIF; and

- In its [letter](#) (dated 6 February 2020) ESMA set out its interpretation of the text of the reporting guidelines and concluded that there was no need for a FAQ on it.

On 19 March 2020 ESMA published a [public statement](#) to ensure a co-ordinated supervisory approach to the application of the SFTR in response to the impact of COVID-19. The reporting obligations under the SFTR apply from 13 April 2020. However, ESMA recognises that the pressures on firms caused by increases in market volatility and COVID-19 has compromised firms' SFTR implementation programmes. Therefore, ESMA expects NCAs not to prioritise their supervisory actions towards entities subject to SFT reporting obligations on 13 April 2020 until 13 July 2020. NCAs should instead apply their risk-based approach when enforcing the applicable legislation in this area proportionately.

On 26 March 2020 ESMA issued a revised version of its 19 March [statement](#) which clarifies that SFTs concluded between 13 April 2020 and 13 July 2020 and SFTs subject to backloading under SFTR also fall within those issues in respect of which competent authorities are not expected to prioritise in their supervisory actions towards counterparties, entities responsible for reporting and investment firms in respect of their reporting obligations under SFTR or MiFIR.

1.20 Benchmark Regulation

The EU Regulation on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds [2016/1011/EU](#) ("BMR") applies since 1 January 2018.

ESMA launched a [consultation](#) on draft RTS under the BMR covering governance, methodology, infringements reporting, non-significant benchmarks and mandatory administration of critical benchmarks on 9 March 2020. The closing date for responses is 8 June 2020.

On 18 March 2020 the European Commission published an [impact inception assessment](#) on its review of the BMR to deal with the transition from panel-based critical interest rate benchmarks to risk-free rates published by central banks, ensure a level playing field in the provision and use of benchmarks, and improve the efficiency and proportionality of the benchmarks regime. Based on feedback received during its 2019 consultation, the review will make amendments to the existing regime to reduce the burden on administrators of benchmarks that are less susceptible to manipulation and to improve the user-friendliness of the regime for benchmark users. The deadline for comments is 15 April 2020.

1.21 CSDR Update

On 4 February 2020 ESMA published a [final report](#) with draft RTS postponing the entry into force of Delegated Regulation (EU) 2018/1229 (which supplements the Central Securities Depositories Regulation [EU/909/2014](#) ("CSDR")) and contains RTS on settlement discipline. It was due to enter into force and apply from 13 September 2020. ESMA's draft Delegated Regulation in the report will postpone the entry into force date to 1 February 2021.

ESMA believes that the postponement is appropriate given the impact of the settlement discipline regime which will affect a wide range of market participants and the additional time needed to prepare for new developments, in particular, the go-live date of the T2S penalty mechanism in November 2020.

On 17 February 2020 ESMA published an updated version of its CSDR [Q&As](#) which clarify the implementation of the settlement discipline regime, as follows:

- Explain that the costs of the penalty mechanism that are charged to participants by a central securities depository ("CSD") should not be allocated based on the number or value of penalties applied to participants;
- Provide further information on the settlement instructions sent by CCPs; and
- Explain that, for the buy-in process, the length of the extension period should be determined based on the liquidity classification of the relevant financial instrument as of the intended settlement date of the transaction.

On 5 March 2020 the International Capital Market Association published [FAQs](#) on CSDR which address the application of the CSDR buy-in provisions for repos and other SFTs and include questions on which transactions are in scope, the process for buy-ins and the treatment of haircuts.

1.22 MiFID II/MiFIR Update

The [Markets in Financial Instruments Directive \(2014/65/EU\)](#) ("MiFID II") and the Markets in Financial Instruments Regulation ([Regulation 600/2014](#)) ("MiFIR") apply from 3 January 2018.

On 31 January 2020 ESMA launched a [consultation](#) on draft technical standards on the provision of investment services and activities in the EU by third-country firms under MiFIR and MiFID II which closes on 28 April 2020. ESMA intends to publish the draft technical standards in Q3 2020.

The February 2020 ESMA [consultation paper](#) on the transparency regime for equity and equity-like instruments, the double volume cap ("DVC") mechanism and the trading obligations for shares under MiFIR closes on 14 April 2020. ESMA has decided on its own initiative to include an assessment of other key transparency provisions, in particular, the share trading obligation (Article 23, MiFIR) and the transparency provisions applicable to systematic internalisers ("SIs") (Articles 14 to 21, MiFIR). In the consultation, ESMA sets out proposals for targeted changes to aspects of the MiFIR transparency regime for equity instruments.

On 4 February 2020 ESMA published a [final report](#) containing technical advice to the European Commission on the effects of the product intervention measures set out in MiFIR.

On 5 February 2020 ESMA [announced](#) the launch of a CSA with NCAs on the suitability requirements under MiFID II. The CSA, which will be carried out during 2020, aims to measure progress made by intermediaries in applying the suitability requirements and how firms take into account the costs of an investment product when recommending it to a client.

On 7 February 2020 ESMA published a [final report](#) on the alignment of derivatives trading obligation ("DTO") under MiFIR with the changes to the scope of the clearing obligation under EMIR introduced by the EMIR Refit Regulation (EU) 2019/834 – see EMIR above for more information.

On 17 February 2020 the European Commission published a [consultation paper](#) on its review of the regulatory framework for investment firms and market operators under MiFID II which closes on 20 April 2020. It looks to gather views on the experience of two years of the application of MiFID II and on any technical aspects and invites comment on any other further regulatory issues.

On 10 March 2020 ESMA launched a [consultation paper](#) reviewing the transparency regime for non-equity instruments and the trading obligation for derivatives under MiFIR which closes on 17 May 2020. It contains possible amendments to the transparency regime based on in-depth data analyses of the effects of the current regime since January 2018.

On 31 March 2020 ESMA provided [clarifications](#) for issues related to the publication of reports by execution venues and firms as required under RTS 27 and 28 under MiFID II.

Over the quarter ESMA updated its MiFID II/MiFIR Q&As on [investor protection and intermediaries topics](#).

1.23 IOSCO Report on Crypto-Asset Trading Platforms

The Board of IOSCO on 12 February 2020 published a [report](#) that describes the issues and risks associated with crypto-asset trading platforms ("CTPs") and sets out key considerations to assist regulatory authorities in addressing these issues. Many of the issues related to the regulation of CTPs are common to traditional securities trading venues but may be heightened by the business models used by CTPs.

1.24 Brexit

Following the decision by the Council of the EU to adopt the withdrawal agreement on 30 January 2020 and the UK's withdrawal from the EU on 31 January 2020, the CSSF confirmed in a [press release](#) on 31 January 2020 that its earlier press releases on Brexit were no longer relevant.

For more information see our client update, [Luxembourg Update: CSSF's Brexit Transitional Period Advisory](#)

1.25 Irish Investment Funds Statistics: Q4 2019

The main points to note in the Central Bank's Q4 2019 issued in March 2020 update are as follows:

- Total assets of Irish resident investment funds increased to €2,923 billion during Q4 2019;
- All fund types recorded net purchases of assets during Q4 2019 totalling €71 billion, of which bond funds accounted for 41%; and
- Debt securities are the largest type of asset held by investment funds, with a total of €1,188 billion at end-Q4 2019. Sterling denominated holdings continued to be the second largest at €384 billion, despite a decrease of €721 million in Q4 2019.

1.26 Luxembourg Undertakings for Collective Investment Statistics

The main points to note in the CSSF's January 2020 update are as follows:

- Total assets held by Luxembourg UCITS, Part II UCIs, SIFs and SICARs ("Luxembourg Investment Funds") increased €71bn from €4,718bn as at December 2019 to €4,789bn as at January 2020;
- Of the 3,719 active Luxembourg investment funds, 2,434 have adopted an umbrella structure resulting in a total of 13,529 sub-funds. The remaining 1,285 Luxembourg investment funds are structured as stand-alone funds;
- As at January 2020, there were a total of 14,814 sub-funds;
- During January 2020, there were more subscriptions than redemptions in equity funds; and
- During January 2020, there were more subscriptions than redemptions in fixed-income funds.

The number of Luxembourg reserved alternative investment funds reached 978 on 16 March 2020.

2 Tax

2.1 Ireland - Tax Residence of Irish Companies and Funds – COVID-19

Irish incorporated companies (including regulated funds which are constituted as bodies corporate such as ICAVs) must take care from an Irish tax perspective, and also from the perspective of any other relevant country that might assert taxing rights, that the necessary steps are taken so that central management and control is located in Ireland and not elsewhere. This is challenging for scheduling board meetings with non-Irish and Irish resident directors being unable to travel or return to Ireland due to the current flight and movement restrictions in light of COVID-19.

For more information on how to deal with this situation from a practical viewpoint see our client update, [Tax Residence of Irish Companies and Funds – Irish and International Tax Considerations in Light of COVID-19](#)

2.2 Luxembourg Draft Law Disallowing Tax Deductions for Royalties and Interest

On 30 March 2020 a [draft law](#) was submitted to the Luxembourg Parliament that will disallow the tax deductibility of interest and royalties paid to related entities located in the EU's list of Non-Cooperative Jurisdictions for Tax Purposes. It is proposed to enter into force on 1 January 2021.

The draft law will specifically disallow the deduction of interest and royalties for tax purposes if the following conditions are fulfilled:

- The beneficial owner is an entity (“organism with collective character”);
- The entity is a related party; and
- The entity is established in a jurisdiction in the EU's List of Non-cooperative Jurisdictions for Tax Purposes.

The draft law particularly applies to payments to related entities that are in corporate form, such as corporations and limited liability companies, located in the listed jurisdictions.

With respect to the Cayman Islands, the draft law is only expected to enter into force in 2021 and therefore should not impact any interest or royalties paid to Cayman corporate entities as the Cayman Islands expects to be assessed as fully compliant and removed from the list when it is reviewed in October 2020.

For more information see our client update, [Denial of Tax Deduction on Interest and Royalties](#)

2.3 Luxembourg Tax Administration Emergency Support Measures

On 17 March 2020 the Luxembourg tax administration released a ['newsletter'](#) which details support measures for Luxembourg taxpayers who may be impacted by the COVID-19 pandemic. This measure includes cancellations and delays for certain Luxembourg tax filing and payment obligations.

For more information see our client update, [COVID-19 Luxembourg Update: Tax Administration Emergency Support Measures](#)

2.4 Tax and Social Security Measures for Luxembourg Cross-Border Workers

Many of Luxembourg's approximate 170,000 cross-border workers now have the benefit of "force majeure" applying to the weeks, if not months, they may continue to spend working remotely in neighbouring Belgium and France.

Both Belgium and France have announced that days spent working remotely due to the pandemic will not impact the percentage threshold tests for determining social security or personal tax regimes. However, Germany so far has only officially announced a similar "force majeure" waiver of the maximum days for social security. Prior to the pandemic, Belgium, France and Germany had begun applying strict limits on work days they would allow for cross-border workers outside of Luxembourg before imposing local taxation on salaries.

German residents who work in Luxembourg are allowed a maximum of 19 days per year outside of Luxembourg, Belgium residents 24 days, and French residents 29 days. Because of force majeure applying, the maximum work days outside of Luxembourg will not be exceeded during this pandemic.

2.5 Luxembourg Controlled Foreign Companies Guidance

On 4 March 2020 the Luxembourg tax authorities issued [Circular 164ter/1](#) providing guidance on the CFC rules enacted in Luxembourg under the EU's Anti-Tax Avoidance Directive I ("ATAD I"). The circular, in particular, elaborates on how both the control and effective tax rate ("ETR") tests are to be applied. It also contains examples on the control test and other aspects.

With respect to the ETR test, it sets out how to determine whether the ETR of the CFC is comparable to at least a rate of 8.5% for 2020 and future years (9% for 2019). Factors to take into account include the local laws on the official tax rate, the calculation and methodology for determining the tax base, as well as any special exemptions or rules that may apply.

Additionally, the circular clarifies how the "comparable tax" analysis should be conducted. A shadow tax calculation should be performed to compare how the CFC would be taxed as if it were subject to corporate tax in Luxembourg and this result should then be compared to the actual tax accruing under the local corporate tax of the CFC in question.

The circular elaborates that transfer pricing documentation should be prepared to support "significant people functions" as a means of establishing genuine economic arrangements for CFCs otherwise at risk for falling under the anti-abuse regime when both the control and ETR tests are satisfied.

By way of background, as from 2019 onwards, Luxembourg enacted CFC rules as part of ATAD 1. For the CFC rules to be potentially applicable both the control and ETR tests must be satisfied. The CFC rules generally require a Luxembourg company, or a Luxembourg permanent establishment of a foreign company, to include in its corporate income tax base the non-distributed income of a CFC (including companies, transparent entities, and permanent establishments) to the extent arising from a non-genuine arrangement and put in place for obtaining a tax advantage.

2.6 Proposed FATCA/CRS Reporting Rules Update

A new [draft law](#) aims to update Luxembourg rules on automatic exchange of information ("AEOI") with the guidelines set out in the Global Forum on Transparency and Exchange of Information for Tax Purposes. Also it contributes to the harmonisation of AEOI for both FATCA and CRS rules under Luxembourg domestic law.

One of the highlights is that in the absence of reportable accounts, it will become mandatory to do a "nil reporting" of such accounts for CRS from 2020 onwards (prior to this, such was only

mandatory for FATCA). Additionally, fines for non-compliance have been proposed including up to €10,000 for incorrect or incomplete reporting, as well as up to €250,000 for non-compliance of due diligence procedures. It is expected to enter in force by 1 January 2021.

2.7 Amended DAC 6 Draft Law

On 21 March 2020 Luxembourg voted to approve its latest amended [version](#) of the sixth Directive on Administration Cooperation, 2018/822/EU ("DAC 6"). The amendments include exemptions on mandatory disclosure for intermediaries who benefit from professional secrecy such as attorneys and auditors.

The first reporting must include all the reportable cross border arrangements that occurred on or after 25 June 2018. All reportable arrangements as from 25 June 2018 up to 1 July 2020 must be reported by 31 August 2020. After 1 July 2020, all "reportable arrangements" must be reported within 30 days as from when the transaction is available, ready, or implemented (whichever is sooner).

DAC 6 requires intermediaries and, in some cases, even taxpayers (if there is no intermediary or if the intermediary is bound by professional secrecy) to report certain cross border arrangements, which are perceived by the EU as likely to be aggressive tax planning, to the Luxembourg tax authorities.

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