



MAPLES  
GROUP

# Funds & Investment Management Update – Ireland and Luxembourg

**Quarterly Update | October - December 2022**

# Table of Contents

<b>1</b>	<b>Legal &amp; Regulatory</b>	<b>3</b>
1.1	UCITS and AIFMD Update	3
1.2	Central Bank (Individual Accountability Framework) Bill 2022 – SEAR	4
1.3	Sustainable Finance Update	4
1.4	CP152 Consultation: New Prudential Rules Proposed for UCITS Mancos and AIFMs with MiFID Permissions	7
1.5	CP86 – Central Bank Industry Letter to Fund Management Companies	7
1.6	PRIIPs KID Q&As on New Filing Requirements	7
1.7	Macroprudential Measures for Irish Property Funds	9
1.8	CSSF Clarifies Eligibility to Open Cash Accounts for Luxembourg AIFs	9
1.9	AML Developments	9
1.10	Liability Driven Investment Funds – Industry Letters	11
1.11	IFR and IFD Update	11
1.12	Amending ELTIF Regulation Update	12
1.13	Covid-19 – Remote Meetings of Companies Extension	12
1.14	Digital Operational Resilience Regulation	12
1.15	NCAs' Handling of Firms' Relocation to EU In Context of Brexit	12
1.16	ESMA Updates MMFR Stress Testing Guidelines	13
1.17	MiFID II / MiFIR Update	13
1.18	Central Bank Fine for UCITS Investment Fund Regulations Breaches	15
1.19	Benchmarks Regulation Update	15
1.20	EMIR Update	15
1.21	Whistleblowing Law Changes	16
1.22	UCI Administrator Authorisation	16
1.23	EU Securitisation Regulation	17
1.24	CSSF FAQ Update on Cross Border Distribution	17
1.25	Final Report on Liquidity Risk Management Recommendations for CIS	17
1.26	CSDR Update	17
1.27	Irish Investment Funds Statistics: Q2 2022	18
1.28	Luxembourg Undertakings for Collective Investment Statistics	18
<b>2</b>	<b>Tax</b>	<b>19</b>
2.1	Interest Limitation Rules –Time to Take Advice for Year Ended 2022	19
2.2	Obligation of Lawyers to Notify Other Intermediaries under DAC6 Infringes Legal Professional Privilege	19
2.3	Legislative Clarification on the Luxembourg Reverse Hybrid Entity Tax Rule with Retroactive Effect 19	
<b>3</b>	<b>Listings</b>	<b>20</b>
3.1	GEM Rules for Investment Funds Updated	20
	<b>Contacts</b>	<b>21</b>
	<b>About the Maples Group</b>	<b>22</b>

# 1 Legal & Regulatory

## 1.1 UCITS and AIFMD Update

### EU

From 1 January 2023 UCITS management companies must produce PRIIPs KIDs for all of their sub-funds distributed to EEA retail investors at share class level. (For more detail see Section 1.6)

On 16 December 2022 the European Securities and Markets Authority ("ESMA") published an updated [Q&A](#) on the application of the Alternative Investment Fund Managers Directive 2011/61/EU ("AIFMD"). It added the question of whether managers of special purpose acquisition companies ("SPACs") are subject to AIFMD. ESMA clarifies that, due to the complex structure of SPAC transactions and the significant variations, it needs to be assessed on a case-by-case basis.

On 21 December 2022 ESMA published a [final report](#) specifying the information to be provided, and the templates to be used, to inform competent authorities of the cross-border marketing and management of investment funds and the cross-border provision of services by fund managers. This issued following a consultation on the draft implementing technical standards ("ITS") and regulatory technical standards ("RTS") that closed on 9 September 2022. For more information see [ESMA Consultation on Notifications for Cross-Border Marketing and Management of Funds](#).

The RTS specify the information to be provided by management companies and AIFMs wishing to carry out their activities in host Member States. The ITS contain the templates to be used by management companies, UCITS and AIFMs to notify their intention to carry out their activities in host Member States and specify the procedure for the communication of information between competent authorities as regards these notifications. ESMA has submitted the RTS and ITS to the European Commission for adoption.

For more information see [ESMA Issues New Guidance and Finalised Rules on EU Cross-Border Activities](#).

On 7 December 2022 the European Commission [published](#) the texts of legislative proposals it has adopted on reforms to EU clearing systems:

- Proposed regulation amending EMIR, the Capital Requirements Regulation (EU) 575/2013 and the Money Market Funds Regulation (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties ("CCPs") and improve the efficiency of Union clearing markets.
- Proposed directive amending the UCITS Directive 2009/65/EC, the CRD IV Directive 2013/36/EU and the Investment Firms Directive (EU) 2019/2034 on the treatment of concentration risk towards CCPs and the counterparty risk on centrally cleared derivative transactions.

These proposals are with the European Parliament and the Council for adoption.

### Luxembourg

On 17 November 2022 the Commission de Surveillance du Secteur Financier ("CSSF") issued a [press release](#) on the availability of a [standardised model prospectus](#) ("SMU") for new UCITS fund launches. The SMU aims to ease the drafting of the UCITS prospectus and facilitate the CSSF's examination of each new UCITS project. The template is editable, permitting users to tailor the prospectus to the characteristics of the relevant UCITS. It is not a new regulatory requirement nor will it guarantee CSSF approval of the new UCITS. The current approval process remains unchanged.

## 1.2 Central Bank (Individual Accountability Framework) Bill 2022 – SEAR

The [Central Bank \(Individual Accountability Framework\) Bill 2022](#) is progressing through the legislative process and is expected to be enacted in Q1 2023.

It will amend current Central Bank legislation and significantly change the regulation and supervision of regulated financial service providers and persons performing controlled functions and pre-approval controlled functions. It introduces a Senior Executive Accountability Regime ("SEAR"), new types of business and conduct standards, and an enhanced fitness and probity ("F&P") regime. The Central Bank of Ireland ("Central Bank") administrative sanctions procedure will also be amended to accommodate the new provisions. The Central Bank will launch a public consultation on the implementation of the Individual Accountability Framework once the Bill is enacted.

For more information see [Preparing for SEAR and IAF: Recommended Measures for all Irish Regulated Firms to Consider](#).

## 1.3 Sustainable Finance Update

### Ireland and Luxembourg

On 1 January 2023 the Level 2 measures (or SFDR Delegated Regulation) under the Sustainable Finance Disclosure Regulation (EU) 2019/2088 ("SFDR") came into effect (see further below). Among other things, these measures will require affected funds to make amendments to their fund documentation, including their prospectuses. The Central Bank announced in September 2022 that it would use a fast-track process. The Central Bank issued a further [communication](#) on 4 October 2022 for UCITS and AIF pre-contractual documentation updates on the SFDR Level 2 measures. Filings had to be made no later than 1 December 2022.

Similarly in Luxembourg, the CSSF [announced](#) on 27 July 2022 a fast track procedure for the examination and approval of updated pre-contractual documentation on SFDR Level 2 measures and the Taxonomy Regulation (EU) 2020/852 ("Taxonomy Regulation") if certain conditions are satisfied. On 6 September 2022 the CSSF [informed](#) financial market participants ("FMPs") that it published a confirmation letter for [UCITS](#) and [AIFs](#) that must accompany the updated pre-contractual documentation filing. Filings had to be made no later than 31 October 2022, although the CSSF subsequently [confirmed](#) that filings not made by this deadline would be processed on a "best efforts" basis.

On 14 November 2022 the Central Bank published a [paper](#) on "Sustainable Finance and the Asset Management Sector: Disclosures, Investment Processes & Risk Management" which sets out the findings of a review of investment fund disclosure, the Central Bank's expectations on SFDR and Taxonomy Regulation implementation, and how the Central Bank will supervise those requirements.

On 2 December 2022 the CSSF issued an [FAQ](#) on the SFDR to provide additional clarity on various aspects of the SFDR, including minimum investment thresholds and the use of exclusion strategies.

In recent weeks, the CSSF has implemented a separate accelerated visa stamping procedure for UCITS funds that submitted updated prospectuses as part of the original fast track procedure. FMPs may benefit from this procedure provided the following conditions are satisfied:

- The updated prospectus was filed before 31 October 2022;
- The updated prospectus has been commented on (at least) once by the CSSF, or the FMP received confirmation that the CSSF had no comments; and
- Following CSSF comments (if any), the necessary amendments were considered and the prospectus submitted for VISA is compliant with the SFDR Delegated Regulation and the requirements of European Commission Q&As on SFDR, the ESMA supervisory briefing on sustainability risks and disclosures and the clarifications published by the European Supervisory

Authorities' "ESAs") (that is, the EBA, EIOPA and ESMA) or CSSF interpretations on the SFDR Delegated Regulation requirements.

On 20 December 2022 the Association of the Luxembourg Fund Industry issued a newsflash to its members confirming this accelerated UCITS visa stamping procedure.

## EU

On 6 October 2022 the European Commission published [FAQs](#) to support disclosures under Article 8 of the Taxonomy Regulation (EU) 2020/852, which requires large public interest entities to include additional information in their non-financial statements on how and to what extent their activities are associated with environmentally sustainable economic activities that are aligned with the Taxonomy Regulation. The FAQs aim to clarify the content of Commission Delegated Regulation (EU) 2021/2178 ("Disclosures Delegated Act"), which sets out the content and presentation of information to be disclosed.

On 24 October 2022 the European Banking Authority ("EBA") published a [report](#) on incorporating environmental, social and governance ("ESG") risks in the supervision of investment firms. The report, which is addressed to national competent authorities ("NCAs"), sets out the foundations for integrating ESG risks-related considerations in the supervisory process for investment firms. It provides an initial assessment of how ESG factors and risks could be included in the supervisory review and evaluation process or SREP.

On 31 October 2022 the European Commission adopted amendments to the technical standards to be used by financial market participants when disclosing sustainability-related information under the SFDR. The [updated Delegated Regulation](#) will undergo a three-month scrutiny period by the European Parliament and the Council. It requires financial market participants to disclose by way of a simple graph the extent to which their portfolios are exposed to the gas and nuclear-related activities that comply with the Taxonomy, as set out in the [Complementary Climate Delegated Act](#).

On 14 November 2022 ESMA published a [letter](#) (dated 26 October 2022) sent by the ESAs to the European Commission on the status of the development of amendments to the SFDR Delegated Regulation.

The SFDR Delegated Regulation contains RTS on content and presentation of information supplementing SFDR. In the letter, the ESAs state it will not be possible to meet the original deadline of April 2023 and do not anticipate producing the proposed amendments before November 2023. The ESAs state that significant challenges have been caused by the technical components and the need to seek input from a range of expert bodies.

On 17 November 2022 the ESAs published new [Q&As](#) on the SFDR Delegated Regulation on:

- Current value of all investments in PAI and taxonomy-aligned disclosures
- Principal adverse impacts (PAI) disclosures
- Financial product disclosures
- Multi-option products
- Taxonomy-aligned investment disclosures
- Financial advisers and execution-only financial market participants

On 18 November 2022 ESMA published a [consultation](#) on guidelines on funds' names using ESG or sustainability-related terms which closes on 20 February 2023. The guidelines specify criteria to assess whether the name of a fund containing terms, acronyms or abbreviations suggesting the fund focuses on investments that have, or investments whose issuers have, ESG or sustainability features, are fair,

clear and not misleading. The guidelines will apply to UCITS management companies and AIFMs as well as EuVECA, EuSEF and ELTIF managers and competent authorities.

ESMA's expectations include the following:

- If a fund has any ESG-related words in its name, at least 80% of its investments should be used to meet the environmental or social characteristics or sustainable investment objectives in accordance with the binding elements of the investment strategy, as disclosed under the SFDR Delegated Regulation.
- If a fund has the word "sustainable" or any other term derived from it in its name, it should allocate at least 50% within the 80% of ESG-related investments to sustainable investments as defined under SFDR.
- Funds designating an index as a reference benchmark should use ESG and sustainability-related words in their name only if specified thresholds are met.
- Funds using the word "impact" or "impact investing" in their name should meet specified thresholds and also make investments with the aim of generating positive and measurable social or environmental impact alongside a financial return.

ESMA expects to publish the final guidelines by Q2 or Q3 2023.

In November 2022 the ESAs issued a call for evidence on better understanding greenwashing in order to further define greenwashing, including asking questions on the characteristics and dimensions of greenwashing and claims being made across the financial sector value chain (which closes in January 2023).

On 16 December 2022 the Corporate Sustainability Reporting Directive ([EU\) 2022/2464](#) was published in the Official Journal. It significantly expands the reporting obligations of companies. The directive introduces more detailed reporting requirements and ensures that large companies and listed SMEs are required to report on sustainability matters such as environmental rights, social rights, human rights and governance factors. It applies to all large companies and listed companies (including listed SMEs). In certain circumstances, non-European companies may be required to produce a sustainability report where they generate a net turnover of €150 million in the EU for each of the last two consecutive financial years and have at least one subsidiary or branch in the EU.

The directive entered into force on 5 January 2023. Member States have to transpose Articles 1 to 3 into national law by 6 July 2024. Article 4 applies from 1 January 2024 for financial years starting on or after 1 January 2024.

On 20 December 2022 the European Commission published:

- A [draft Commission Notice](#) on the interpretation and implementation of certain legal provisions of the Taxonomy Climate Delegated Act establishing technical screening criteria for economic activities that contribute substantially to climate change mitigation or climate change adaptation and do no significant harm to other environmental objectives.
- A [draft Commission Notice](#) on the interpretation and implementation of certain legal provisions of the Disclosures Delegated Act under Article 8 of Taxonomy Regulation on the reporting of Taxonomy-eligible and Taxonomy-aligned economic activities and assets.

The notices contain replies to FAQs on the application and implementation of the EU Taxonomy Climate Delegated Act and the Taxonomy Regulation.

The SFDR Delegated Regulation applies from 1 January 2023. On 27 December 2022 a [corrigendum](#) to the SFDR Delegated Regulation was published in the Official Journal of the EU. The Corrigendum updates Page 1 of the Commission Delegated Regulation.

## 1.4 CP152 Consultation: New Prudential Rules Proposed for UCITS Mancos and AIFMs with MiFID Permissions

On 1 December 2022 the Central Bank published [CP152](#) – a consultation on a proposed change to own funds requirements for UCITS management companies and AIFMs authorised with a MiFID top-up to provide discretionary portfolio management services. It seeks views on the proposal to align the own funds requirements for UCITS management companies and AIFMs that provide discretionary portfolio management services with the own funds requirements applicable to MiFID investment firms authorised to provide similar services set out in IFR.

Responses to CP152 must be submitted by 23 February 2023. It does not provide a timeline for when the proposed amendments to effect the necessary changes to the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2019 and the AIF Rulebook will be made.

For more information see [CP152: New Prudential Rules Proposed for UCITS Mancos and AIFMs with MiFID Permissions](#).

## 1.5 CP86 – Central Bank Industry Letter to Fund Management Companies

On 7 December 2022 the Central Bank issued an [industry letter](#) addressed to fund management companies ("FMCs") covering key findings from the June 2022 survey. Some of the findings/expectations of the letter include:

- FMCs: There has been a marked decrease in FMCs operating in the market which can be attributed to a 90% decrease in self-managed investment companies.
- Growth of third-party FMCs: Given the associated growth in AUM of third-party FMCs, the Central Bank expects that such entities have the capacity to take on this business without compromising expected standards or investor protection.
- Mancos with MiFID top-ups: The growth in AUM by FMCs using IPM permissions is noted. The Central Bank expects that such FMCs are fully aware of their MiFID obligations and integrate them into their risk and compliance frameworks.
- CEOs: The increase in CEOs is viewed as positive and the letter reminds FMCs that all but the smallest FMCs should have a CEO.
- Director time commitments: The increase in time commitments to directorship roles is positive but the Central Bank will continue to monitor excessive numbers of directorships.
- Designated persons and support staff: The increase in staff numbers at FMCs is another positive.
- INED tenure: While the number of INEDs with a tenure of 10 years has decreased, the Central Bank notes this still represents a sizeable number of directors who continue to be classified as independent notwithstanding their tenure. Tenure and independence should continue to be assessed by the OE Director which should include an approach to ensure regular rotation of board members.
- Board diversity: A significant gender imbalance at board level is noted. The Central Bank expects that FMCs continue to consider diversity as part of governance reviews including due consideration of factors such as skills, age, gender, culture and ethnicity.

The Central Bank expects that the letter's findings will be addressed by FMCs' Boards.

## 1.6 PRIIPs KID Q&As on New Filing Requirements

From 1 January 2023 UCITS management companies will be required to produce PRIIPs KIDs for all of their sub-funds distributed to EEA retail investors. The UCITS KID is therefore being replaced by a PRIIPS KID for EEA retail investors.

## Ireland

On 21 December 2022 the Central Bank published the [37th edition](#) of the UCITS Q&A. It features three new Q&As on the new PRIIPs filing requirements. It states that where an existing UCITS produces a PRIIPs KID, there is no requirement to file it with the Central Bank on 1 January 2023; the first reporting of these is expected to take place in 2024. It also sets down the filing obligations for new UCITS seeking Central Bank authorisation or approval.

On 21 December 2022 the Central Bank also published the [46th edition](#) of the Central Bank AIFMD Q&A. This revises Q&A ID 1126, which considers if AIFs in scope of the PRIIPs Regulation are required to file with the Central Bank. The Q&A sets out the Central Bank's requirement that Retail Investor AIFs which produce PRIIPs KIDs shall file these on an ex post basis; this will include periodic updates to existing KIDs. The first annual reporting of such KIDs will take place in January 2024.

## Luxembourg

On 16 December 2022 the CSSF published an updated [FAQ on the law of 17 December 2010 relating to undertakings for collective investment](#). It clarifies that, in accordance with [Regulation \(EU\) 1286/2014](#) ("PRIIPs Regulation"):

- Manufacturers of Luxembourg UCITS are required to make available to retail investors in the EU/EEA a key information document ("PRIIPs KID") as of 1 January 2023;
- Luxembourg UCITS that replace their KIDs with PRIIPs KIDs need to file these with the CSSF by 31 January 2023;
- The existing filing procedure and naming convention continues to apply to PRIIPs KID filings;
- Where a Luxembourg UCITS is no longer made available to retail investors from 1 January 2023 and changes to the existing commitments are only subject to the contractual terms and conditions agreed before that date, a PRIIPs KID is not required; and
- Manufacturers of Luxembourg retail UCITS that are closed to further investment on 31 December 2022 must update their KIIDs, even after 1 January 2023.

On 16 December 2022 the CSSF updated its [FAQ on the law of 12 July 2013 on alternative investment fund managers](#) to amend answers to existing questions to reflect the 1 January 2023 deadline and repeal other questions. On 16 December 2022 the CSSF published an updated [FAQ on SIFs and SICARs that do not qualify as AIFs](#). It revises one FAQ to confirm that manufacturers of Luxembourg SIFs and SICARs, which do not qualify as AIFs but are offered or sold to retail investors, must produce a PRIIP KID.

On 16 December 2022 the CSSF also updated its [FAQ on the KID](#). It revises a number of questions on the filing of final versions of KIDs and the steps to be completed prior to issuing share classes in a UCITS or a sub-fund thereof. From 1 January 2023 it will only apply to UCITS reserved to professional investors or to investors established outside the EEA.

## EU

On 14 November 2022 the Joint Committee of the ESAs published an [updated Q&A](#) on the KID requirements for PRIIPs. They include, among other things, the following new sections:

- What is this product?
- Past performance
- Investment funds
- Autocallable products

The new Q&As apply from 1 January 2023.



On 21 December 2022 the Joint Committee published a further updated [Q&A](#). As some of the Q&As concerned requirements that were amended by Commission Delegated Regulation (EU) 2021/2268, the Q&As needed to be revised or deleted; these revisions or deletions are in this updated version and include the following new sections:

- Performance scenarios
- Derivatives
- PRIIPs with a recommended holding period of less than one year
- Multi-option products
- Methodology of calculation of costs

## 1.7 Macprudential Measures for Irish Property Funds

Following the Central Bank 2021 consultation on Irish property funds, on 24 November 2022 it published its [new regulatory regime](#) for Irish property funds. The new measures will apply to AIFMs of AIFs domiciled in Ireland, authorised under domestic legislation and investing 50% or more directly or indirectly in Irish property assets.

Key points are:

- A fixed leverage limit of 60% (as a ratio of total debt to total assets) from the originally proposed 50%. This is effective from 24 November 2022.
- The grandfathering period for existing deals to comply has been extended to five years (from the originally proposed three years).

On 24 November 2022 ESMA issued its [advice](#) on the proposed leveraged limits by the Central Bank on Irish real estate funds which concludes that the conditions for taking actions under AIFMD are met and the proposed measure is justified and should contribute to improving the resilience of real estate funds and to limiting the build-up of risk in the commercial real estate sector. It recommends the Central Bank closely monitor the evolution of the Irish real estate sector to ensure the effectiveness of its measure and to assess the necessity to recalibrate the leverage limit.

## 1.8 CSSF Clarifies Eligibility to Open Cash Accounts for Luxembourg AIFs

On 18 October 2022 the CSSF clarified the types of entities eligible to open and hold the cash accounts of Luxembourg AIFs. It confirmed that under Article 19(7) of the amended [law of 12 July 2013](#) on alternative investment fund managers, Article 86(a) of [Commission Delegated Regulation \(EU\) 231/2013](#) and points (a), (b) and (c) of Article 18(1) of [Directive 2006/73/EC](#), only central banks, EU authorised credit institutions as well as third-country authorised banks ("Eligible Entities") may qualify as eligible entities for the purpose of holding cash accounts in the relevant market where cash accounts are required for the purposes of an AIF's operations.

By clarifying its position on the types of entities which are eligible to open and hold cash accounts for AIFs, the CSSF appears to exclude electronic money institutions or payment institutions governed by the [law of 10 November 2009](#) on payment services, as amended by Directive (EU) 2015/2366 on payment services in the internal market from the scope of Eligible Entities for the purpose of holding the cash accounts of AIFs.

For more information see [CSSF Clarifies Eligibility to Open Cash Accounts for Luxembourg AIFs](#).

## 1.9 AML Developments

### EU and International

On 22 November 2022 the EBA published its [final report](#) on guidelines on the use of remote customer onboarding solutions under Article 13(1) of the Fourth Money Laundering Directive (EU) 2015/849

("MLD4"). The guidelines set out the steps firms should take to ensure safe and effective remote customer onboarding practices in line with MLD4 and the EU's data protection framework. In particular, they establish common EU standards on developing and implementing sound, risk-sensitive initial CDD policies and processes in the remote customer onboarding context (including when relying on third-parties). The deadline for NCAs to report their compliance with the guidelines is two months after publication of the translations. The guidelines will enter into force six months after publication.

On 22 November 2022 the Court of Justice of the European Union ("ECJ") [held](#) that disclosure of beneficial information to undefined members of the public created an excessive interference with the fundamental rights to respect for private life and to the protection of personal data in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union. As such, MLD4 was invalid in so far as it required information on the beneficial ownership of companies to be publicly accessible. The ECJ recognised there are good reasons for information on beneficial ownership of companies to be collected but must be balanced against an individual's rights to a private life and the protection of personal data. It suggests that any person accessing the data must demonstrate a "legitimate interest". Members of the general public who access information on the beneficial ownership of Irish companies have only been able to see a restricted sub-set of that information.

As a result of this decision, the Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies (managed by the Companies Registration Office) has suspended its search facility while it works on restricting access to it.

Information on the beneficial ownership of other entities such as ICAVs is held on the Beneficial Ownership Register of Certain Financial Vehicles managed by the Central Bank. This is still operating but the Central Bank asks those requesting information to confirm whether they are a designated person or competent authority.

For more information see [ECJ Rules Public Access to Beneficial Ownership Information Invalid](#).

On 6 December 2022 the EBA launched a [consultation](#) on two new sets of guidelines on the effective management of money laundering and terrorist financing ("ML/TF") risks when providing access to financial services. The first set is adding a new section to the EBA's ML/TF risk factors guidelines, which set out what financial institutions should do to identify and tackle ML/TF risk. The second set tackles the issue of effective management of ML/TF risks by financial institutions when providing access to financial services. The consultation runs until 6 February 2023.

On 6 December 2022 the Financial Action Task Force October 2022 consultation papers on reviewing [recommendation 25](#) on the transparency and beneficial ownership of legal arrangements and the related interpretative note, and on revising the guidance on [recommendation 24](#) on the transparency and beneficial ownership of legal persons, closed.

On 7 December 2022 the Council of the EU [announced](#) it has adopted a position on the proposed AML Regulation and MLD6. These form a legislative package designed to strengthen the EU's AML and CTF regime, adopted by the European Commission in July 2021. The Council decided that cryptoasset service providers ("CASPs") should apply CDD measures when carrying out transactions amounting to EUR €1,000 or more. It has also added measures to mitigate risks relating to transactions with self-hosted wallets and introduced enhanced due diligence measures for cross-border correspondent relationships for CASPs. In addition, it has clarified the beneficial ownership provisions to make them more transparent. The Council is now ready to start triologue negotiations with the Parliament to agree the final texts.

On 19 December 2022 the European Commission adopted a [Delegated Regulation](#) that amends the list of high-risk third-countries with strategic AML and CTF deficiencies produced under Article 9(2) of MLD4. It adds the Democratic Republic of the Congo, Gibraltar, Mozambique, Tanzania and the United

Arab Emirates to the table and removes Nicaragua, Pakistan and Zimbabwe. It is with the Council of the EU and the Parliament for approval.

## Luxembourg

On 4 October 2022 the CSSF updated its [FAQs](#) on completing the CSSF's AML/CFT Market Entry Form ("MEF") through the CSSF's online [eDesk portal](#). The MEF must be completed by CSSF supervised funds and Luxembourg investment fund managers ("IFMs") in a number of circumstances, including prior to the launch of a new fund. The CSSF has updated Question 13 on indirect shareholders holding minority interests in an IFM.

On 26 October 2022 the CSSF updated a consolidated version of the Grand Ducal Regulation of 1 February 2010 ("2010 GDR") providing details on certain provisions of the amended law of 12 November 2004 on the fight against money laundering and terrorist financing. It incorporates amendments to the 2010 GDR introduced by the [Grand Ducal Regulation of 25 October 2022](#).

On 8 November 2022 the CSSF [published](#) the results of its thematic review into the AML/CFT controls applied in terms of preventing tax offences. In December 2016 Luxembourg extended the list of money laundering predicate offences to include aggravated tax fraud and tax evasion. As a result, professionals subject to AML/CFT obligations are required to take into account these predicate tax crimes within the scope of their obligations, notably around customer due diligence ("CDD") and cooperation with authorities, as outlined in CSSF Circular 17/650 (as amended). The CSSF's thematic review focused on IFMs and found the overall understanding of the risks associated with predicate tax offences and the related mitigation measures applied by IFMs were satisfactory. However, the CSSF also identified weaknesses in areas such as: risk assessments; control functions; and tax calculations, filing and reporting, and it set out some examples of best practices to be followed.

On 7 December 2022 the CSSF [announced](#) that its 2022 online AML/CFT survey will be available from 15 February 2023. The survey collects standardised key information on money laundering and terrorism financing risks to which the professionals under the CSSF's supervision are exposed. Answers must be submitted through the CSSF's eDesk by 31 March 2023. The CSSF previously reprimanded and fined a number of IFMs for late filing of the AML/CFT survey.

### 1.10 Liability Driven Investment Funds – Industry Letters

On 30 November 2022 ESMA [welcomed](#) supervisory actions taken by NCAs in Ireland and Luxembourg in respect of liability-driven investment funds ("LDI funds"). On 30 November 2022 the Central Bank and the [CSSF](#) both published letters addressed to LDI fund managers asking them to maintain the current level of resilience and the reduced risk profile of GBP LDI funds.

According to these letters, managers wanting to reduce GBP LDI fund's yield buffers below the current levels shall inform their NCA in advance and provide a justification. LDI funds denominated in GBP proved to be vulnerable to the volatility surge in the UK gilts market in September 2022. The two NCAs engaged with GBP LDI fund managers who subsequently increased the resilience of their funds.

### 1.11 IFR and IFD Update

The Investment Firms Directive ([EU 2019/2034](#) ("IFD")) and the Investment Firms Regulation ([EU 2019/2033](#) ("IFR")) introduced a new prudential regime for MiFID investment firms across the EU that were subject to the Capital Requirements Regulation ([EU 575/2013](#)) and the CRD IV Directive.

On 14 November 2022 the EBA published a [final report](#) on RTS on specific liquidity measurement under the IFD. Article 42 of the IFD gives competent authorities the power to impose additional Pillar 2 liquidity requirements on an individual investment firm, where that firm is exposed to liquidity risk or elements of liquidity risk that are material. The draft RTS specify in detail how the liquidity risk and

elements of liquidity risk in Article 42(2) should be measured. In particular, competent authorities will have to assess:

- All elements specific to each service provided by the investment firm under MiFID II.
- Other elements that could have a material impact, such as external factors, group structure, operational or reputational risks.

The draft RTS have been submitted to the Commission for endorsement following which they will be subject to scrutiny by the Parliament and the Council before being published in the Official Journal. They will apply 20 days after publication.

### **1.12 Amending ELTIF Regulation Update**

On 7 December 2022 the Council of the EU published an [information note](#) with the proposed text of the amending regulation to the Regulation on European long-term investment funds (EU) 2015/760 ("ELTIF Regulation"). It also states that, if the Parliament adopts the text at first reading, the Council will also adopt it. The Parliament is scheduled to consider the text at its 1-2 February 2023 plenary session. The aim of the amending regulation is to improve the functioning of the ELTIF and make ELTIFs more attractive for both managers and investors.

### **1.13 Covid-19 – Remote Meetings of Companies Extension**

In Ireland, the [interim period](#) of the Companies (Miscellaneous Provisions) (Covid-19) Act 2020 for certain measures has been extended again to 31 December 2023. Until that date, both general and creditors' meetings may be held virtually.

### **1.14 Digital Operational Resilience Regulation**

Digital operational resilience refers to the ability of financial institutions to ensure they can withstand all types of ICT-related disruptions and threats, including cyber-attacks.

On 27 December 2022 the following were published in the Official Journal of the EU:

- Regulation [\(EU\) 2022/2554](#) on digital operational resilience for the financial sector ("DORA").
- Directive [\(EU\) 2022/2556](#) as regards digital operational resilience for the financial sector ("DORA Amending Directive").

DORA will establish a harmonised and comprehensive digital operational resilience framework across the whole EU financial sector by requiring a wide range of financial entities in the banking, insurance and investment sectors to manage their ICT risks in a robust way. It will also streamline the existing patchwork of relevant provisions in EU financial services legislation.

Both enter into force on 16 January 2023. DORA will apply from 17 January 2025 and member states are required to apply measures implementing the DORA Amending Directive from the same date.

For more information see [DORA: New EU Operational Resilience Regime for the Financial Sector](#).

### **1.15 NCAs' Handling of Firms' Relocation to EU In Context of Brexit**

On 8 December 2022 ESMA published a [peer review report](#) into the handling by NCAs of firms' relocation to the EU in the context of Brexit. It covers the assessment of three distinct sectors: MiFID firms, trading venues and fund managers. The key focus for all three sectors were entities' governance and substance requirements. The review targeted different jurisdictions in each of the three sectors, where the most or complex activities were relocated. Key findings include:

- NCAs allowed, in certain cases, for an extensive use of outsourcing or delegation arrangements.

- Several firms relocated with limited technical and human resources in the EU. In particular, NCAs applied different interpretations of proportionality on substance requirements. This led to some smaller firms relocating with minimal set-ups.

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

## 1.16 ESMA Updates MMFR Stress Testing Guidelines

On 30 November 2022 ESMA published a [final report](#) on guidelines on stress test scenarios under Article 28 of the Money Market Funds Regulation (EU) 2017/1131 ("MMFR"). It contains the updated guidelines and the calibration of scenarios for 2022. The shocks have been calibrated to be severe, plausible and consistent with European Central Bank and European Systemic Risk Board ("ESRB") projections, taking into account the uncertainty about the economic consequences of the Russian invasion of Ukraine, geopolitical tensions and the COVID-19 pandemic.

The [ESRB adverse scenario](#) for the guidelines (dated 3 November 2022) has also been published.

MMFs and their managers are expected to measure the impact of the common reference stress scenarios in the guidelines. On the basis of the measurements, the reporting template in Article 37 of the MMFR should be completed and sent with quarterly reports to the relevant NCA. The new 2022 parameters will have to be used for the purpose of the first reporting period following the start of the application of the updated guidelines. Until then, managers should use the parameters set in the 2021 guidelines and report the results accordingly.

The guidelines will be translated and will become applicable two months after the publication of the translations. ESMA may consult on revising section 4.8 of the guidelines in the first half of 2023.

## 1.17 MiFID II / MiFIR Update

### Ireland

The [European Union \(Markets in Financial Instruments\) \(Amendment\) \(No. 3\) Regulations 2022](#) came into force on 22 November 2022 and amended the European Union (Markets in Financial Instruments) Regulations 2017 to provide for the integration of sustainability factors into product governance obligations, as required by Commission Delegated Directive (EU) 2021/1269 amending Directive (EU) 2017/593.

### Luxembourg

The [Grand Ducal Regulation of 27 July 2022](#) came into force on 22 November 2022 and amended the [Grand Ducal Regulation of 30 May 2018](#) in order to transpose Commission Delegated Directive (EU) 2021/1269.

### EU

On 17 November 2022 ESMA issued a [consultation](#) on the review of the technical standards under Article 34 of the [Markets in Financial Instruments Directive \(EU\) 2014/65](#) ("MiFID II") covering the provision of investment services across the EU. The main amendments proposed add a number of items to the information that investment firms are required to provide at the passporting stage such as the marketing means the firm will use in host Member States, the language(s) for which the investment firm has the necessary arrangements to deal with complaints from clients, and the

investment firm's internal organisation in relation to its cross-border activities. The consultation closes on 17 February 2023.

On 8 December 2022 the European Commission [published](#) three legislative proposals in connection with its Capital Markets Union commitment to simplify EU listing rules:

- A draft regulation to amend the EU Prospectus Regulation (EU) 2017/1129, the EU Market Abuse Regulation (EU) 596/2014 and Regulation (EU) 600/2014 ("MiFIR").
- A draft directive on multiple-vote share structures.
- A draft directive to amend MiFID II and repeal Listing Directive 2001/34/EC.

These aim to reduce the regulatory burden and to increase the flexibility accorded under company law to a company's founder(s) or controlling shareholder(s) to choose how to distribute voting rights after the admission to trading of shares.

On 14 December 2022 ESMA published a non-binding [supervisory briefing](#) with guidance on the supervision of cross-border activities of investment firms under MiFID II focused on services provided to retail investors. It covers:

- Authorisation of firms with cross-border plans under Articles 5, 6 and 7 of MiFID II.
- Processing of passport notifications under Article 34 of MiFID II and their impact on the supervisory approach applied to firms.
- Arrangements in place to carry out ongoing supervisory activities.
- Carrying out ongoing supervision.
- Carrying out investigations and inspections.

In light of this briefing, NCAs can be expected to closely assess new authorisation applications and passport applications for firms with plans to offer services to retail clients on a cross-border basis.

For more information see [ESMA Issues New Guidance and Finalised Rules on EU Cross-Border Activities](#).

On 14 December 2022 ESMA published a [statement](#) to provide clarity to market participants on best execution reporting. It expects NCAs not to prioritise supervisory actions towards execution venues relating to their periodic reporting obligation to publish reports, from 1 March 2023, under Delegated Regulation (EU) 2017/575 (RTS 27) until the forthcoming amendments to MiFID II applies. The MiFID II Amending Directive (EU) 2021/338 temporarily suspended the RTS 27 reporting requirement until 28 February 2023. The European Commission's legislative proposal on the MiFID II review proposes to delete the obligation to publish RTS 27 reports. It has to be considered by the European Parliament and the Council of the EU and this will most likely not happen before 28 February 2023. Therefore, the RTS 27 reporting obligation would temporarily re-apply after 28 February 2023 until the amended MiFID II would apply. The Central Bank has [welcomed](#) this ESMA statement.

On 19 December 2022 ESMA issued a positive [opinion](#) on the European Commission's review of the regulatory technical standards – RTS 1 equity and RTS 2 non-equity transparency – on pre-trade and post-trade transparency requirements (to establish a clearer transparency regime) under MiFIR.

On 20 December 2022 the Council of the EU [agreed](#) a mandate for negotiations with the European Parliament on the proposed regulation reviewing MiFIR and the amended MiFID II and published the [revised texts](#) on 21 December 2022.

Over the quarter, ESMA updated its MiFIR [Q&As](#) on market structures topics also.

## 1.18 Central Bank Fine for UCITS Investment Fund Regulations Breaches

On 14 November 2022 the Central Bank reprimanded and [fined](#) an Irish regulated firm €117,600 under its administrative sanctions procedure for six breaches of UCITS investment fund regulations.

The firm admitted that, for varying periods, the prospectuses and KIDs for five sub-funds failed to disclose that the sub-funds relied upon an index-tracking strategy, or provide the details of the index being tracked. The UCITS Regulations require that certain information must be included in prospectuses and KIDs and this information should be kept up-to-date in order to enable investors to make informed decisions about their investments. The resultant fine of €168,000 was reduced by 30% to €117,600 under the settlement discount scheme in the administrative sanctions procedure.

## 1.19 Benchmarks Regulation Update

On 25 November 2022 ESMA published a [report](#) on administrative sanctions and measures and criminal sanctions imposed under the Benchmarks Regulation (EU) 2016/1011 ("BMR") in 2021. In 2021 one administrative sanction and one administrative measure were imposed on a supervised contributor by one NCA (in Germany) for a single infringement. No criminal sanctions were imposed.

On 28 November 2022 ESMA published a [consultation](#) on amendments to Commission Delegated Regulation (EU) 2018/1646 supplementing BMR with regard to RTS on the information that EU benchmark administrators must provide in applications for authorisation and registration.

The RTS need to be amended to reflect the changes made to the RTS on the recognition regime introduced in ESMA's final report on the review of the RTS on recognition to ensure an equal treatment of EU-based versus third country-based administrators. The consultation closes on 31 January 2022. ESMA expects to publish a final report and submit the draft RTS to the European Commission for endorsement in Q1 2023.

On 28 November 2022 ESMA published [amendments](#) to Commission Delegated Regulation (EU) 2018/1645 supplementing BMR with regard to RTS on the form and content of applications for recognition by third-country administrators. The European Commission has three months to decide whether to endorse them.

## 1.20 EMIR Update

The Regulation on over the counter ("OTC") derivative transactions, 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 25 October 2022 the European Commission adopted two Delegated Regulations that amend existing RTS made under EMIR to extend the temporary exemptions regime for intragroup contracts for three years. They will enter into force on the day after their publication in the Official Journal of the EU.

On 27 October 2022 six Delegated Regulations and Implementing Regulations containing RTS and ITS respectively supplementing EMIR relating to reporting, data quality, data access and the registration of TRs came into force.

On 29 November 2022 Commission Delegated Regulation ([EU](#) 2022/2311) amending RTS in Delegated Regulation (EU) 153/2013 relating to temporary emergency measures on collateral requirements under EMIR came into force. Delegated Regulation (EU) 153/2013 specifies, among other things, requirements for CCPs to accept highly liquid collateral with minimal credit and market risk. The amending regulation temporarily expands the pool of eligible collateral to public guarantees and uncollateralised bank guarantees. These provisions will expire on 29 November 2023.

On 29 November 2022 Commission Delegated Regulation ([EU](#) 2022/2310) amending RTS in Delegated Regulation (EU) 149/2013 relating to the commodity derivative clearing thresholds under

EMIR came into force. Delegated Regulation (EU) 149/2013 specifies, among other things, the values of the clearing thresholds for the purpose of the clearing obligation under EMIR. The amending regulation increases the clearing threshold for commodity derivatives from €3 billion to €4 billion.

On 7 December 2022 the European Commission adopted a [legislative proposal](#) for a Regulation containing extensive amendments to EMIR (and other EU regulations) intended to mitigate excessive exposures to third-country CCPs and improve the efficiency of EU clearing markets (see "UCITS and AIFMD Update" above for more detail).

On 20 December 2022 ESMA published [guidelines and technical documentation](#) on reporting under EMIR REFIT. The guidelines clarify:

- Transition to reporting under the new rules;
- The number of reportable derivatives;
- Intragroup derivatives exemption from reporting;
- Delegation of reporting and allocation of responsibility for reporting;
- Reporting logic and the population of reporting fields;
- Reporting of different types of derivatives;
- Ensuring data quality by the counterparties and the TRs;
- Construction of the trade state report and reconciliation of derivatives by the TRs; and
- Data access.

They will be published in all EU languages and will enter into force on 29 April 2024.

## 1.21 Whistleblowing Law Changes

The [Protected Disclosures \(Amendment\) Act 2022](#) applies from 1 January 2023 and strengthens the protection of whistleblowers under the Protected Disclosures Act 2014. It also imposes new obligations on employers and others who receive protected disclosures. The Act requires all private sector organisations with 250 or more employees to establish formal procedures for the making of protected disclosures, although it will eventually apply (from 17 December 2023) to organisations with between 50 and 249 employees. However, certain employers, including those in the public sector and certain financial services firms regardless of number of employees, must comply with the Act from 1 January 2023.

For more information see [Year-End Deadline for Regulated Entities' Whistleblowing Procedures](#).

## 1.22 UCI Administrator Authorisation

On 2 December 2022 the CSSF published an updated [FAQ](#) on the authorisation and organisation of entities acting as administrator in connection with [CSSF circular 22/811](#). It contains two new FAQs and concerns the scope of the FAQ as well as the performance of and responsibility for the administration functions. It clarifies various points following the circular's publication, including that IFMs and investment funds will not qualify as a UCI administrator where the registrar function, the NAV calculation and accounting function and the client communication function have been delegated. On 9 November 2022 the CSSF also updated its "Authorisation as UCI Administrator" [form](#) with regard to the practical application of the circular.

For more information see [Funds and Investment Management Update Ireland and Luxembourg Q2 2022](#) and [Funds and Investment Management Update Ireland and Luxembourg Q3 2022](#).



### 1.23 EU Securitisation Regulation

On 2 November 2022 Commission Implementing Regulation (EU) 2022/1929 amending the ITS in Implementing Regulation (EU) 2020/1227 as regards the templates for the provision of information in accordance with the STS notification requirements for on-balance-sheet synthetic securitisations came into force. It sets out the content and format of the notification templates for on-balance-sheet synthetic STS securitisations.

On 12 December 2022 the ESAs published their [joint advice](#) to the European Commission on the review of the securitisation prudential framework covering: banking advice which assesses the recent performance and appropriateness of the rules on capital and liquidity requirements for banks; and insurance advice which reviews the securitisation capital framework applicable to insurers.

### 1.24 CSSF FAQ Update on Cross Border Distribution

On 11 November 2022 the CSSF updated its [FAQ](#) on the rules on cross-border distribution of collective investment undertakings following the entry into force of Directive (EU) 2019/1160 and the changes on the notifications procedures from 2 August 2021. It features one new FAQ on the naming convention to be used for alternative versions of visa-stamped prospectuses.

### 1.25 Final Report on Liquidity Risk Management Recommendations for CIS

On 17 November 2022 the International Organisation of Securities Commissions ("IOSCO") published a [final report](#) on a thematic review of its liquidity risk management recommendations. It looks at the extent to which participating IOSCO member jurisdictions have implemented regulatory measures relating to its key February 2018 recommendations for liquidity risk management for collective investment schemes. The review looked at five recommendations relating to the CIS design process, three recommendations on day-to-day liquidity management and two recommendations on liquidity contingency planning.

Seven of the 14 participating jurisdictions were fully consistent with all 10 recommendations. However, IOSCO found some gaps of materiality in the other participating jurisdictions in respect of one or more of the recommendations. All 14 participating jurisdictions were at least partly consistent with all 10 recommendations. Overall, participating jurisdictions were broadly consistent across all 10 recommendations.

### 1.26 CSDR Update

On 20 October 2022 ESMA published an updated [Q&A](#) on the implementation of the Central Securities Depositories Regulation (EU) 909/2014 ("CSDR") and added new Q&As on the calculation, scope and costs and processes of cash penalties in the settlement discipline section.

On 2 November 2022 Commission Delegated Regulation (EU) 2022/1930 amending the RTS on settlement discipline in Commission Delegated Regulation (EU) 2018/1229 to suspend the application date of the mandatory buy-in regime under CSDR came into force. It defers the application of the mandatory buy-in rules until 2 November 2025.

On 21 November 2022 ESMA published a [final report](#) on amendments to Article 19 of the RTS on settlement discipline in Delegated Regulation (EU) 2018/1229 which supplements CSDR. Article 19 provides for a specific collection and distribution process for cash penalties to be carried out by CCPs which can directly collect and distribute penalties from and to their own clearing members. It aims to ensure that, in respect of settlement fails relating to cleared transactions, where CCPs interpose themselves between counterparties, cash penalties are not applied to CCPs. ESMA's draft amending RTS remove this special collection and distribution process that applies to CCPs and put CSDs in

charge of the entire process of collection and distribution of all penalties. The next step is for ESMA to submit the draft RTS to the European Commission for endorsement.

On 25 November 2022 ESMA published a further updated [Q&A](#) on implementation of CSDR which adds a new Q&A on settlement discipline in Part III, relating to settlement fails.

On 20 December 2022 the Council of the EU [agreed](#) to revise EU rules on CSDRs. The proposed CSDR Refit Regulation clarify that it is the home member state, i.e. where the CSD is authorised, that will ultimately decide on the CSD's application to provide cross-border services. In the case where the CSD's activities in at least two other member states are considered of substantial importance for the functioning of the securities markets and the protection of investors, a college of supervisors will be mandatorily set up. The timeframe of the passporting process will also be clarified and shortened. The proposal also further streamlines rules on "mandatory buy-in" where a transaction has failed to settle at the end of a prescribed period, the buyer of the securities could be forced to repurchase them elsewhere.

### **1.27 Irish Investment Funds Statistics: Q3 2022**

The main points to note in the Central Bank's [Q3 2022 statistics](#) issued in November 2022 are as follows:

- The net asset values ("NAVs") of Irish-resident funds continued to decline this year, falling to €3,635 billion at end-September 2022. The total NAV decreased by €59 billion (2%) during Q3.
- All fund types, except hedge funds and MMFs, showed NAV decreases during the quarter, driven by both negative revaluations and investor outflows. The total negative revaluations were €58 billion, while investor outflows reached €256 million. The outflows from Irish-resident funds of €4.5 billion were offset by €4.2 billion net inflows from MMFs.
- Equity and bond funds showed the largest declines, 2.4% and 3.6% respectively, during the quarter. The decrease in bond funds was driven by net outflows of (€8 billion) and revaluations (€22 billion), of which revaluations of UK Sterling had the strongest impact.

### **1.28 Luxembourg Undertakings for Collective Investment Statistics**

The main points to note in the CSSF's [November 2022](#) update for regulated Luxembourg funds are as follows:

- Total net assets held by Luxembourg UCITS, Part II UCIs, SIFs and SICARs ("Luxembourg Investment Funds") amounted to €5,166.373 billion as at 30 November 2022.
- The number of CSSF-regulated Luxembourg Investment Funds active in the market totals 3,375.
- Of the 3,375 active Luxembourg Investment Funds, 2,204 entities have adopted an umbrella structure and together have a total of 13,133 sub-funds. The remaining 1,171 are structured as stand-alone funds.
- As at 30 November 2022, there were a total of 14,304 fund units.
- During November 2022, there were more redemptions than subscriptions in equity funds while there were more subscriptions than redemptions in fixed-income funds.
- In addition the number of Luxembourg RAIFs reached 2,173 as of 2 January 2023.

# 2 Tax

## Ireland

### 2.1 Interest Limitation Rules –Time to Take Advice for Year Ended 2022

Clients with fund vehicles holding Irish subsidiary entities (typically "section 110 companies") should take advice on the interest limitation rules ("ILR"). These rules which are derived from the EU Anti-Tax Avoidance Directives, apply for accounting periods commencing from 1 January 2022. The ILR may restrict the tax deductibility of interest payments by those entities in certain cases, in particular, where the company has non-interest income. If a company has non-interest income and cannot access any of the available exceptions, it could become subject to a material amount of Irish corporation tax at a rate of 25%. A number of exemptions apply which may mitigate the impact of the ILR.

An understanding of the rules and reporting will be needed for 2022 corporation tax returns which will be due in the course of 2023. Irish audit firms will request an explanation of the ILR position for companies as part of their statutory audit process. The directors of such entities will need to ensure they can demonstrate they have taken due care and attention in complying with their obligations to manage tax risks and submit tax returns.

## EU

### 2.2 Obligation of Lawyers to Notify Other Intermediaries under DAC6 Infringes Legal Professional Privilege

DAC6 (Directive on administrative cooperation (EU) 2011/16 as amended) requires certain intermediaries and, in certain circumstances, taxpayers to report certain cross-border arrangements to national tax authorities. For more information see [Irish Finance Act 2019 - Enactment of the EU Mandatory Disclosure of Cross-Border Arrangements Directive \(DAC6\)](#). The DAC6 Directive allows EU Member States to exempt intermediaries from the reporting obligations where to require them to report would breach legal secrecy or professional privilege rules that apply in the Member State. As such, lawyers may benefit from a waiver of their reporting obligations under DAC6. However, there was still a requirement in DAC6 for such legal intermediaries to notify other intermediaries involved in the arrangement (where that other intermediary was not exempt from reporting obligations) or to notify the taxpayer directly that such other intermediary or taxpayer might be required to report the arrangement.

On 8 December 2022 the ECJ ruled that the obligation to notify other intermediaries imposed on lawyers is an interference with the right to respect for communications between lawyers and their clients guaranteed in Article 7 of the EU Charter of Fundamental Rights. This is on the basis that it is not strictly necessary to meet the objectives of DAC6 and indirectly infringes the right to legal professional privilege ([Case C-694/20 Orde van Vlaamse Balies and others](#)).

It has been reported that the EU will use DAC8 (proposed EU reporting rules for crypto-asset transactions) to amend DAC6 to reflect the ECJ decision in this case.

## Luxembourg

### 2.3 Legislative Clarification on the Luxembourg Reverse Hybrid Entity Tax Rule with Retroactive Effect

On 23 December 2022 the Luxembourg reverse hybrid rule in Article 168quater of the modified Luxembourg Income Tax Law ("LITL") was amended. It states that the double non-taxation outcome resulting from the reverse entity must only be due to the mismatch classification of such entity. In other words, the absence of taxation on the profits of the Luxembourg tax transparent entity must be

due to its tax opaque classification under the laws of the jurisdiction of its investors. Consequently, tax-exempt recipient investors (who benefit from a local tax exemption), as well as recipient investors located in tax neutral jurisdictions should not be taken into consideration for the rule to be triggered. The amendment applies with retroactive effect from 1 January 2022, i.e. as from the original date of the reverse hybrid entity rule entering into force in Luxembourg.

This clarification is expected to ease the first filing of Luxembourg partnerships' annual tax returns as new tax forms for Luxembourg partnerships (form 200 or 300) are expected to include a specific section where the filing partnership will have to state whether or not it is a reverse hybrid entity under Article 168quater LITL.

For more information see [Legislative Clarification on the Luxembourg Reverse Hybrid Entity Tax Rule with Retroactive Effect](#).

## 3 Listings

### 3.1 GEM Rules for Investment Funds Updated

Euronext Dublin have amended the Global Exchange Market ("GEM") [Rules](#) for Investment Funds with effect from 3 January 2023. Following on from amendments introduced in 2022 to the Code of Listing Requirements and Procedures for Investment Funds for the regulated market, Euronext have now replicated these changes for UCITS funds which are applying to list on GEM. The rule changes reflect the highly regulated nature of UCITS products and also align the rules with other Euronext jurisdiction listing rules for UCITS.

# Contacts

## Dublin

### Adam Donoghue

Partner, Co-Head of Funds & Investment Management

adam.donoghue@maples.com

### Eimear O'Dwyer

Partner, Co-Head of Funds & Investment Management

eimear.odwyer@maples.com

### Caitriona Carty

Partner, Funds & Investment Management

caitriona.carty@maples.com

### Stephen Carty

Partner, Funds & Investment Management

stephen.carty@maples.com

### Ian Conlon

Partner, Funds & Investment Management

ian.conlon@maples.com

### Ronan Cremin

Partner, Funds & Investment Management

ronan.cremin@maples.com

### John Gallagher

Partner, Funds & Investment Management

john.gallagher@maples.com

### Philip Keegan

Partner, Funds & Investment Management

philip.keegan@maples.com

### Deirdre McIlvenna

Partner, Funds & Investment Management

deirdre.mcilvenna@maples.com

### Aaron Mulcahy

Partner, Funds & Investment Management

aaron.mulcahy@maples.com

### Niamh O'Shea

Partner, Funds & Investment Management

niamh.oshea@maples.com

### Peter Stapleton

Managing Partner

peter.stapleton@maples.com

### Emma Conaty

Head of Global Registration Services

emma.conaty@maples.com

### Andrew Quinn

Partner, Head of Tax

andrew.quinn@maples.com

### William Fogarty

Partner, Tax

william.fogarty@maples.com

### Lynn Cramer

Partner, Tax

lynn.cramer@maples.com

## Luxembourg

### Johan Terblanche

Managing Partner, Head of Funds & Investment Management

johan.terblanche@maples.com

### Michelle Barry

Partner, Funds & Investment Management

michelle.barry@maples.com

### Manfred Dietrich

Partner, Funds & Investment Management

manfred.dietrich@maples.com

### Jean-Dominique Morelli

Partner, Tax

jean-dominique.morelli@maples.com

### James O'Neal

Principal, Tax

james.oneal@maples.com

## Cayman Islands

### Pádraig Brosnan

Partner, Funds & Investment Management

padraig.brosnan@maples.com

## Hong Kong

### Ann Ng

Partner, Funds & Investment Management

ann.ng@maples.com

## London

### Fearghal De Feu

Partner, Funds & Investment Management

fearghal.defeu@maples.com

# About the Maples Group

The Maples Group is a leading service provider offering clients a comprehensive range of legal services on the laws of the British Virgin Islands, the Cayman Islands, Ireland, Jersey and Luxembourg, and is an independent provider of fiduciary, fund services, regulatory and compliance, and entity formation and management services. The Maples Group distinguishes itself with a client-focused approach, providing solutions tailored to their specific needs. Its global network of lawyers and industry professionals are strategically located in the Americas, Europe, Asia and the Middle East to ensure clients gain immediate access to expert advice and bespoke support, within convenient time zones.

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 2021). 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).

© MAPLES GROUP 2023

This update is intended to provide only general information for the clients and professional contacts of the Maples Group. It does not purport to be comprehensive or to render legal advice. Published by Maples and Calder (Ireland) LLP and Maples and Calder (Luxembourg) SARL.



MAPLES  
GROUP