

Asset Management & Investment Funds Update

July 2022



Key Dates & Deadlines: Q3 2022

Date	Source	Summary	Action/Impact
Q3 (exact date to be confirmed)		Deadline for filing PPSNs for beneficial owners of ICAVs, ILPs, CCFs and unit trusts with the Central Bank as Registrar for the relevant beneficial ownership register.	Relevant fund vehicles to gather PPSNs for beneficial owners and for those without PPSNs, identify whether a Central Bank reference number is available and, if not, prepare to file declarations in accordance with specified regulatory process. See here for further details.
Q3 (exact date to be confirmed)		Revised ESMA MiFID Suitability Guidelines, updated to take account of sustainable preference rules, expected to be finalised.	In-scope fund managers to advance compliance preparations for MiFID sustainable preference rules effective 2 August 2022 (see below) absent final ESMA guidelines which are not expected to be published in advance of 2 August deadline. See here for further details.
Q3 (exact date to be confirmed)		Central Bank thematic review on sustainable finance.	Following its SFDR/Taxonomy spot check review (the outcome of which has yet to issue), the Central Bank has confirmed its intention to carry out a thematic review which would precede the 2023/4 ESMA proposed CSA on sustainable finance and greenwashing.

4 July		Application date of latest ESMA Guidelines on stress test scenarios under the MMF Regulation updated to incorporate revised parameters in Section 5 'Calibration' of the guidelines.	Central Bank notice of intention of 4 July 2022 confirms its expectation of full compliance by MMF managers with the latest MMF stress testing guidelines from 4 July 2022.
6 July		Anticipated end of SFDR Level 2 legislative scrutiny period following which, if no objections are raised on the Commission's adopted text/scrutiny period is not extended, SFDR Level 2 will enter into force and be applicable from the scheduled date of 1 January 2023.	Advance preparations for, as applicable, disclosure of entity-level PAIs and product-level green/social characteristics/objectives using the mandated disclosure templates appended to SFDR Level 2. See here for further details.
21 July		Scheduled completion date for Commission review of MMFR under the legislation.	Action required will depend on any draft proposals issued by the European Commission to potentially amend the MMFR. See here for further details.
31 July		New Central Bank 'Fund Profile V2' regulatory return required to be filed by existing funds (authorised on or before 29 April 2022) in respect of report date 30 April 2022 on ONR.	Following the introduction of a new version of the Fund Profile return, which delayed the December 2021 annual Fund Profile return filing, a once-off mid-year filing of this return by existing funds is required. For future returns, the return dates will revert to as of 31 December and due by 28/29 February beginning with the return for 31 December 2022. See here for further details.
1 August		Effective date of UCITS Directive and AIFMD provisions for the governance and management of sustainability risks and adverse sustainability impacts.	Advance compliance preparations including any necessary updates to investment due diligence, risk management, conflicts of interest and resourcing arrangements for the management of sustainability risk. ESMA May 2022 Supervisory Briefing refers. See here for further details. On 27 June 2022, Irish Funds published fund manager Guidance for Integrating Sustainable Finance Duties focussing on compliance actions for the 1 August deadline.
2 August		Effective date of MiFID organisational requirements and operating conditions for the integration of sustainability factors, risks and preferences including the amended MiFID client suitability assessment rules.	In-scope fund managers to advance compliance preparations for sustainability risk management rules and update client suitability assessment processes and procedures to reflect new sustainability preference rules. See here and here for further details.

<p>8 August</p>		<p>Corporate Sustainability Reporting Directive (CSRD) sustainability reporting standards consultation closed for comment.</p>	<p>'Large' and in-scope SME fund management companies to consider compliance preparations for CSRD reporting standards expected to be in place from January 2026, for f/y 2025. See here and this month's article on topic for further details.</p>
<p>1 September</p>		<p>Last phase of applicants (covered entities with an aggregate average notional amount of non-centrally cleared derivatives greater than €8 billion) subject to the initial margin requirements under EMIR.</p>	<p>This marks the end of the phase-in for initial margin requirements under EMIR. In-scope funds must exchange, on a bilateral basis, initial margin with a threshold not to exceed €50 million and a deminimis minimum transfer amount not to exceed €500,000. See here for further details.</p>
<p>30 September</p>		<p>Third calculation date for the assessment of the principal adverse impacts of investment decisions under SFDR Article 4(1)(a), (3) or (4).</p>	<p>Implement processes and procedures for the collection of data necessary to calculate PAIs on each of the calculation dates during the first PAI reference period of January – December 2022 ahead of the publication of the first PAI statement by 30 June 2023. See here for further details.</p>

Fund Managers' Sustainability Risk Obligations

Since 10 March 2021, UCITS managers and AIFMs (**Fund Managers**) are required under SFDR to make website and pre-contractual disclosure of their policies for the integration of Sustainability Risks in the investment decision-making process.

Sustainability Risk integration policies are required to set out the processes in place for continuously assessing all relevant Sustainability Risks alongside relevant financial risks (**SFDR Sustainability Risk Policies**). Details of the Sustainability Risk Policy are required to be published on the Fund Manager's website (SFDR Article 3) and in the fund prospectus along with the likely impact of such risks on fund returns, based on the Fund Manager's sustainability risk assessment (SFDR Article 6).

Sustainability risk is the risk of an environmental, social or governance event or condition having a negative material impact on the value of an investment (Sustainability Risks).

Upcoming Sectoral Obligations for Fund Managers

From 1 August 2022, the UCITS and AIFMD regimes require Fund Managers (including self-managed UCITS and AIFs) to assess, measure and manage underlying funds' exposure to Sustainability Risks in accordance with existing relevant governing regime rules. Such UCITS and AIFMD obligations, which were originally intended to come into effect at the same time as the above SFDR measures, aim to ensure that Fund Managers comply with their cross-sectoral SFDR Sustainability Risk obligations (as detailed above) in a manner consistent with relevant governing regime rules for the performance of investment due diligence, risk management, identification and management of conflicts of interest and ensuring adequate levels of resourcing.

However, due to the delayed implementation of the UCITS/AIFMD sectoral measures, Fund Managers must now revisit their approach to compliance with the cross-sectoral SFDR Sustainability Risk rules, in particular the adoption of SFDR Sustainability Risk Policies pre-10 March 2021, and ensure such compliance is in line with their governing regime obligations in advance of the 1 August compliance deadline.

For those Fund Managers which have yet to formally adopt SFDR Sustainability Risk Policies (or otherwise comply with the above-mentioned SFDR Sustainability Risk rules), they should do so promptly and in any event in advance of the 1 August 2022 compliance deadline. This is particularly important in light of last month's Supervisory Briefing from ESMA on the integration of Sustainability Risks and sustainability-related disclosures in which ESMA recommends NCAs take regulatory action to combat greenwashing, including in the event of Fund Managers' failure to integrate Sustainability Risks in line with the UCITS and AIFMD requirements as summarised below. See [here](#) for further details on the ESMA Supervisory Briefing.

New UCITS and AIFMD Sustainability Risk requirements effective 1 August 2022

INVESTMENT DUE DILIGENCE	<ul style="list-style-type: none"> (i) Fund Managers shall take into account Sustainability Risks when undertaking investment due diligence. (ii) Fund Managers that consider investments' principal adverse impacts (PAIs) on sustainability factors under SFDR must take account of such impacts as part of their investment due diligence.
IMPACT	<p>Fund Managers must take account of investments' Sustainability Risks and, where relevant, PAIs on sustainability factors:</p> <ul style="list-style-type: none"> • in the selection and ongoing monitoring of investments • when ensuring adequate knowledge and understanding of the assets in which the funds invest • in written due diligence policies and procedures • <i>in respect of underlying UCITS:</i> when formulating forecasts and performing analyses of investments' contribution to the portfolio composition, liquidity and risk and reward profile of the fund • <i>in respect of underlying UCITS:</i> when verifying (initially and on an ongoing basis) the ability and capacity of any third party which performs risk management activities to perform those activities reliably, professionally and effectively.
SUGGESTED ACTION	
<p>Review SFDR Sustainability Risk Policy to ensure due diligence in respect of Sustainability Risks and, where relevant, the PAIs of investments, is carried out in accordance with existing due diligence rules for Fund Managers.</p>	

RISK MANAGEMENT	<ul style="list-style-type: none"> (i) Fund Managers' risk management policies must include procedures to assess, measure and manage underlying funds' exposure to Sustainability Risks. (ii) Fund Managers' organisational processes and procedures must reflect the integration of Sustainability Risks in the risk management policy.
IMPACT	<p>Fund Managers must establish risk management procedures for the assessment, measurement and management of Sustainability Risks of the underlying funds and ensure existing decision-making procedures, reporting processes and procedures, allocation of functions and responsibilities, internal control mechanisms and record-keeping procedures are applied to the assessment, measurement and management of Sustainability Risks.</p>
SUGGESTED ACTION	
<p>Review SFDR Sustainability Risk Policy to ensure Sustainability Risk assessment, measurement and management procedures comply with existing sectoral rules for risk management, and organisational processes and procedures are applied to the integration of Sustainability Risks.</p>	

CONFLICTS OF INTEREST	Fund Managers' identification of conflicts of interest must include the identification of any conflicts arising from the integration of Sustainability Risks in their processes, systems and internal controls.
IMPACT	Any conflicts of interest arising from the integration of Sustainability Risks across Fund Managers' systems, processes and controls should be identified and managed in line with existing conflicts of interest policies and procedures.
SUGGESTED ACTION	
Review SFDR Sustainability Risk Policy to ensure conflicts of interest arising from the integration of Sustainability Risks in systems, processes and controls are identified and managed in line with existing conflicts of interest rules for Fund Managers.	

RESOURCING	Fund Managers shall ensure senior management are responsible for the integration of Sustainability Risks in the investment decision-making and risk management processes and procedures and shall retain the necessary resources and expertise for the effective integration of Sustainability Risks.
IMPACT	Fund Managers should ensure sufficient technical expertise at senior management level, for example through regular training for professional development with respect to sustainability-related matters, to oversee the integration of Sustainability Risks, including (where applicable) the oversight of any delegates' performance of the assessment, measurement and management of Sustainability Risks.
SUGGESTED ACTION	
Review SFDR Sustainability Risk Policy to ensure necessary resourcing of Sustainability Risk integration and (where applicable) oversight and monitoring of relevant delegates.	

New Rules to Facilitate Whistleblowers

The regime for the protection of persons making specified disclosures (**whistleblowers**) will shortly be amended and extended by the transposition of the EU Whistleblowing Directive (the **Directive**) into Irish law. As a result, fund management companies (**FMCs**) will soon be subject to new and enhanced obligations which will require FMCs to have in place internal reporting channels to facilitate whistleblowers.

Current whistleblower regime

The current regime in Ireland for the protection of whistleblowers comprises several different legislative measures, including:

- (i) *the Protect Disclosures Act 2014* – protects 'workers' making disclosures of 'relevant wrongdoings'
- (ii) *Central Bank (Supervision and Enforcement) Act 2013* – protects PCFs required to make disclosures of offences under, or contraventions of, financial services legislation to the Central Bank
- (iii) *UCITS Regulations* – require UCITS managers and corporate UCITS funds to have appropriate procedures in place for employees to report infringements of the UCITS Regulations through specific, independent and autonomous channels
- (iv) *EU (Money Laundering and Terrorist Financing) Regulations 2019* – require designated persons (including UCITS managers, AIFMs and corporate funds) to have appropriate procedures for employees to report contraventions of the Criminal Justice Act 2010 (as amended)

As a result of (iii) and (iv) above, FMCs are currently obliged to have in place internal channels and procedures to enable employee reporting of contraventions of the UCITS Regulations (in the case of UCITS/managers) and contraventions of AML legislation (both UCITS managers and AIFMs).

Amendments to current regime

The transposition of the Directive will be by way of amendment to (i) above, as set out in the Protected Disclosures (Amendment) Bill 2020 (the **Bill**). The Bill includes the following amendments which are likely to impact FMCs' whistleblowing policies and procedures:

- **extension of the scope of protection:** under the current regime, whistleblower protection is principally limited to employees however, amendments to the definition of this terms will extend the scope to a far wider cohort including, but not limited to, shareholders, board members, and job applicants. The scope of information subject to protection is also to be extended from information obtained 'in connection with the worker's employment' to information obtained 'in a work-related context'
- **extension of contraventions/wrongdoing:** under the current regime FMCs are obliged to protect employees reporting infringements of the UCITS Regulations (in the case of UCITS managers), contraventions of the Criminal Justice Acts (all FMCs) and 'relevant wrongdoings' under the Protected Disclosures Act 2014 (all FMCs). The Bill extends the definition of 'relevant wrongdoing' to include breaches of EU law including across financial services, prevention of money laundering and terrorist financing, protection of privacy and personal data, security of network and information systems. As a result, all FMCs will be required to protect employees reporting breaches of the specified legislative measures.
- **internal reporting procedures:** under the current regime, FMCs are required to have in place employee reporting channels and procedures as set out at (iii) and (iv) above. Following enactment of the Bill, such channels and procedures will require to:
 - be operated internally or externally by a third party authorised by the FMC
 - operate securely so as to ensure confidentiality of the reporting person
 - provide for written acknowledgement of receipt of the report within 7 days
 - designate an impartial person(s) to diligently follow up on reports, maintain communication, request further information and provide feedback, as necessary, to the reporting person including carrying out an initial assessment for prima facie evidence of a relevant wrongdoing and relaying the result of that assessment to the reporting persons, providing feedback to the reporting person within a reasonable time of no more than 3 months from acknowledgement of the report and at regular intervals of 3 months until the procedure is closed
 - provide for clear and easily accessible information to be given to employees on the reporting channels and procedures, making anonymous reports (if accepted) and for making external reports
 - allow for receipt of reports in writing or orally, or both, and from employees of the FMC's subsidiaries, affiliates, and to the extent possible by its agents, suppliers and any persons who might acquire information on relevant wrongdoings through their work-related activities with the FMC

Next Steps

Ireland has missed the deadline for transposition of the Directive, which passed on 17 December 2021. As such, there is some impetus to the adoption and finalisation of the Bill. While there are transitional arrangements under the Bill for certain entities until December 2023, these are not applicable for FMCs. As a result, it is expected that FMCs will be immediately subject to the terms of the Bill as enacted, following its entry into force.

Corporate Sustainability Reporting for Managers not Funds

On 21 June 2022, EU co-legislators reached provisional agreement on the Corporate Sustainability Reporting Directive (**CSRD**) which will replace the current EU non-financial reporting regime under the Non-Financial Reporting Directive (**NFRD**) and apply detailed new sustainability reporting standards to large EU-based companies and EU listed companies.

Background

CSRD, the Sustainable Finance Disclosures Regulation (**SFDR**) and the Taxonomy Regulation are the core legislative measures under the EU sustainable finance action plan/strategy. Both SFDR and CSRD are intended to increase the level of sustainability information in the market by obliging financial and non-financial

companies to report on the sustainability impacts of their activities (outward looking) along with the impact of sustainability factors on their activities (inward looking). The Taxonomy Regulation sets out a harmonised system for the classification of business activities as sustainable and as such acts as a reference point/benchmark for companies reporting under SFDR and CSRD.

Latest proposal includes key revisions for funds and fund managers

Several key amendments to the Commission's CSRD proposal, of relevance to funds and fund managers, have been made as part of the legislative process to date. The following are reflected in the provisionally agreed text published on 30 June last:

- (i) **corporate funds not in scope:** CSRD is not proposed to apply to corporate UCITS and AIFs in scope of SFDR. This is a most welcome development which should ensure that corporate funds are not subject to dual-reporting obligations under CSRD and SFDR.
- (ii) **delayed application:** while the Commission proposed 1 January 2023 as the first application date, the latest proposal is for CSRD to first apply to reports published after 1 January 2025 (for F/Y 2024) by companies already subject to NFRD.
Funds and fund managers are reliant on the sustainability reporting of companies in which they invest to meet many of their own sustainability reporting obligations under SFDR and the Taxonomy Regulation and so this delay may have a negative impact on funds and fund managers SFDR/Taxonomy compliance preparations.
- (iii) **delayed application to non-NFRD large companies:** the proposed reporting deadline for large companies, not currently subject to mandatory reporting under the NFRD, is 1 January 2026 (on 2025 data). Large companies being those which on their balance sheet dates exceed two of the three criteria of (i) balance sheet total: EUR20m; (ii) net turnover: EUR40m; (iii) average number of employees during the financial year: 250.
- (iv) **delayed application to listed small and medium-sized companies:** the proposed reporting deadline for listed SMEs is 1 January 2027 (on 2026 data) however reporting standards will apply to listed SMEs on a comply-or-explain basis until 2028 and are to be calibrated 'taking into account their specific characteristics'.

Next Steps

CSRD is expected to be finalised and enter into force by the end of the year. CSRD delegated measures setting out sustainability reporting standards are scheduled for adoption by the Commission by June 2023, with a complementary second set due by June 2024. These delegated measures will detail the information that an in-scope company will be required to report pursuant to its CSRD sustainability reporting obligations.

Regulatory Guidance on QIAIF Pre-Submission Process

In early July 2022, the Central Bank published guidance on the 'Pre-submission process for a Qualifying Investor AIF' (the **Guidance**). The Guidance confirms that a pre-submission is required only for QIAIFs investing in Irish property (**Irish property QIAIFs**) and those investing in crypto-assets (**crypto-asset QIAIFs**).

The Guidance sets out non-exhaustive lists of documents which must be included in the pre-submission for both Irish property and crypto-asset QIAIFs, noting that no pre-submission is required in the case of QIAIFs investing <10% in cash-settled Bitcoin futures traded on the Chicago Mercantile Exchange, subject to receipt of relevant confirmations as set out in the Guidance.

While no response timeframe is set out, the Guidance notes that pre-submissions must be made in good time to allow for consideration in advance of the proposed authorisation date and the Central Bank will endeavour to assess and respond in a timely manner.

The Guidance is output from the Central Bank's ongoing review of its authorisations processes and follows the [publication in May 2022](#) of guidance for derogation requests and for the approval/clearance of investment managers, advisers and non-EU AIFMs.

Ukraine: EU to add violation of sanctions to list of EU crimes

On 30 June 2022, the EU proposed extending the list of 'EU crimes' to include violations of restrictive measures, such as the EU sanctions adopted in response to the situation in Ukraine. The proposal aims to harmonise definitions across Member States of what constitutes a breach of restrictive measures and what penalties should be applied in the event of a breach. If the proposal is approved, the EU has indicated an intention to adopt legislation with minimum rules for the definition of criminal offences and penalties for the violation of EU restrictive measures.

Central Bank Taxonomy Disclosure Guidance

On 23 June 2022, the Central Bank revised its May 2022 guidance for Taxonomy disclosures by funds in scope of SFDR Article 8 and 9 as well as those not in scope of SFDR product-level disclosure rules (**Taxonomy Guidance**). The May 2022 guidance was amended to align with the Commission's second SFDR Q&A, also published in May 2022 (see [here](#) for further details). The revised Taxonomy Guidance was published with immediate effect and is applicable until 1 January 2023 (effective date of SFDR Level 2 measures).

Taxonomy Guidance

The Taxonomy Guidance sets out regulatory expectations for disclosures required by funds in scope of the Taxonomy:

1. *Funds subject to Article 5 Taxonomy (SFDR Article 9 funds with environmentally sustainable investments) and funds subject to Article 6 Taxonomy (SFDR Article 8 funds promoting environmental characteristics)*

- (i) if the fund elects to use the Taxonomy's classification system as part of its asset allocation strategy it must make pre-contractual disclosure, based on reliable data, of the minimum proportion (explicit quantification) of taxonomy-aligned investments in the portfolio and the Central Bank expects that:
 - the taxonomy-alignment disclosure does not include negative justifications (for instance, explaining a lack of alignment by a lack of data) and the disclosure should not leave ambiguity about the alignment of the investments of the fund with the Taxonomy
 - pre-contractual documents should not refer to 'incidental investment' in taxonomy-aligned investments
 - the taxonomy-alignment disclosure could be accompanied by a qualitative clarification explaining how the fund determined the proportion of taxonomy-aligned investments, for example by including the sources of information for the determination
 - pre-contractual documents referencing complementary assessments and estimates on the basis of information from other sources should be in line with recital 21 of the Taxonomy
 - funds subject to Article 6 Taxonomy must include the following pre-contractual disclaimer: *"The "do no significant harm" principle applies only to those investments underlying the financial product that take into account the EU criteria for environmentally sustainable economic activities. The investments underlying the remaining portion of this financial product do not take into account the EU criteria for environmentally sustainable economic activities."*
- (ii) if the fund elects not to use the Taxonomy classification system as part of its asset allocation strategy, it must make pre-contractual disclosure of this and **indicate zero** investments in taxonomy-aligned investments. The Central Bank expects that:
 - the disclosure does not include negative justifications (for instance, explaining a lack of alignment by a lack of data) and the disclosure should not leave ambiguity about the alignment of the investments of the fund with the Taxonomy Regulation.
 - the pre-contractual document disclosure should not refer to 'incidental investment' in taxonomy-aligned investments

- pre-contractual documents should not refer to 'incidental investment' in taxonomy-aligned investments
- funds subject to Article 6 Taxonomy must include the following pre-contractual disclaimer: *"The "do no significant harm" principle applies only to those investments underlying the financial product that take into account the EU criteria for environmentally sustainable economic activities. The investments underlying the remaining portion of this financial product do not take into account the EU criteria for environmentally sustainable economic activities."* While the disclaimer is arguably not appropriate for funds which do not invest in taxonomy-aligned investments, the Central Bank has clarified that it must be included and be read as confirming that the 'do no significant harm' principle applies to 0% of the fund's investments with the 'remaining portion' referencing 100% of the fund's portfolio.

2. Funds subject to Article 7 Taxonomy (funds not subject to Article 8 or 9 SFDR)

- The pre-contractual document must include the following statement *"The investments underlying this financial product do not take into account the EU criteria for environmentally sustainable economic activities."*

Next steps

The Central Bank expects disclosures to be updated to take account of the Taxonomy Guidance at the earliest available opportunity, in the normal course of business or at the latest by 1 January 2023.

Outsourcing Registers

On 17 December 2021, the Central Bank published cross-industry guidance for regulated firms, including fund management companies (**FMCs**), setting out regulatory expectations for the governance and risk management of outsourcing activities (the **Guidance**). The Guidance was published with immediate effect however, the Central Bank has confirmed that its supervisory approach will take account of the adjustments necessary for firms to ensure compliance with the Guidance. Our briefing on the Guidance is available [here](#).

Guidance for outsourcing registers

As set out in the Guidance, the Central Bank expects FMCs and other regulated firms to establish and maintain an outsourcing register to identify and facilitate oversight and awareness of current and proposed outsourcing arrangements. FMCs with a PRISM rating of Medium Low and above are additionally required to submit the register to the Central Bank on an annual basis.

While the Guidance sets out 'general content' for the register along with a sample register, the Central Bank has confirmed its intention to publish spreadsheet templates for the register. The templates were scheduled to be made available in Q2 2022 however, according to Irish Funds, their publication has been delayed as they continue to undergo testing. The Central Bank expects to publish the templates and associated instructions for completion and, where required, submission of the register on the Central Bank's website in the coming weeks.

Next Steps

An 8-week timeframe from publication of the templates to submission of the register has been indicated by the Central Bank.

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