




# Asset Management & Investment Funds Update






September 2023








## Key Dates & Deadlines: Q3&4 2023

The following are key dates and deadlines in Q3 and Q4 2023 along with possible impacts and action items arising for fund managers.

Date	Source	Summary	Action/Impact
2023 (date dependent on publication date of relevant financial report)		<p><b>SFDR Level 2 – fund annual report disclosures</b></p> <p>SFDR Level 2 financial report disclosure rules, effective 1 January 2023, must be addressed in annual reports published after that date irrespective of the relevant financial or reference period.</p>	Fund managers must ensure annual financial statements published after 1 January 2023, for funds subject to SFDR Article 7, 8 or 9, incorporate the relevant disclosures and using the Level 2 templates where applicable.
3 September		<p><b>Updated MiFID Suitability Guidelines – in effect</b></p> <p>Updated Guidelines were published in April 2023 taking account of the sustainability preference rules with an effective date of 6 months post publication.</p> <p>See <a href="#">here</a> for further details.</p>	MiFID firms and fund managers with a MiFID top-up licence must ensure compliance with the updated guidelines ahead of the effective date.
4 September	<p><b>FSB</b></p> 	<p><b>Policies to address vulnerabilities from liquidity mismatch in open-ended funds</b></p> <p>FSB Consultation closes to comment.</p> <p><b>Anti-Dilution LMTs – Guidance for Effective Implementation of the Recommendations for Liquidity Risk Management for CIS</b></p> <p>IOSCO consultation closes to comment.</p>	Consultation response deadline.

		See <a href="#">here</a> for further details.	
11 September		<p><b>DORA – Level 2 consultation closes</b></p> <p>First set of Level 2 standards are available for consultation covering ICT risk management framework, classification criteria for ICT-related incidents, outsourcing register, ICT third-party providers.</p> <p>See <a href="#">here</a> for further details.</p>	UCITS managers and AIFMs are in scope of DORA which is effective from 17 January 2025. In addition to progressing compliance preparations for DORA, fund managers must also prepare to comply with the <a href="#">Central Bank's Cross-Industry Guidelines on Operational Resilience</a> for which action plans/evidence of action taken are expected by 1 December 2023.
12 September		<p><b>Sustainability CSA – first deadline</b></p> <p>First-phase CSA engagement in the form of a detailed questionnaire to select group of fund managers is due for completion by 12 September.</p> <p>See article on topic in this month's update for further details.</p>	All fund managers should take note of the areas of focus for the CSA as findings are likely to issue all managers with the usual requirement for gap analyses and action plans to address identified gaps.
14 September		<p><b>IAF &amp; SEAR – second consultation response deadline</b></p> <p>CP154 on reforms to the Central Bank's Administrative Sanctions procedure to support and underpin the IAF closes to comment.</p> <p>See <a href="#">here</a> for further details.</p>	Consultation response deadline.
15 September		<p><b>Call for Evidence – sustainability preferences in MiFID II suitability and produce governance</b></p> <p>ESMA is seeking contributions by this date on challenges in addressing the sustainability preference rules, the impact of these rules on investor choices and complying with the updated Suitability Guidelines effective 3 September 2023.</p> <p>See <a href="#">here</a> for further details.</p>	MiFID firms have the opportunity to highlight the various challenges experienced in implementing the sustainability preference rules to ESMA.
15 September		<p><b>Markets in Crypto-Assets Regulation – consultation closures</b></p> <p>End of ESMA consultation on crypto-asset service provider rules.</p>	National and EU consultation response deadlines.
20 September		End of Department of finance consultation on national discretions under MiCA	
30 September		<p><b>Cost and Fees CSA Gap Analysis and Action Plan - deadline</b></p> <p>Fund managers must have completed a gap analysis against the Central Bank's findings from the CSA on Costs and Fees and</p>	Central Bank Cost and Fees CSA findings were published on 24 March 2023 and detail regulatory expectations for all fund managers to have in place a formal, structures pricing process for cost and fee structures.

		<p>adopted an action plan for any identified gaps by end Q3. See <a href="#">here</a> for further details.</p>	
<p>Early October (exact date TBC)</p>		<p><b>ESMA Guidelines on Fund Names – publication of final report</b></p> <p>Guidelines on use of ESG or sustainability-related terms in the name of funds are expected to be finalised and published with an application date of 3 months post publication and a 6-month transition period for existing fund names. See <a href="#">here</a> for further details.</p>	<p>Draft Guidelines set out quantitative thresholds for investment in E/S aligned or sustainable investments for Article 8 and 9 funds which use ESG/sustainability-related terms in the fund name.</p>
<p>October (exact date TBC)</p>		<p><b>Central Bank ELTIF Consultation - to be published</b></p> <p>A consultation on a new stand-alone AIF Rulebook chapter for ELTIFs is expected to issue with a view to finalising the national regime ahead of the entry into effect of amendments to the ELTIF regime on 10 January 2024. See article on topic in this month's update for further details.</p>	<p>This is a welcome development and paves the way for Irish domiciled ELTIFs to be authorised using the full suite of Irish dedicated fund legal structures, such as the ICAV and Investment Limited Partnership. The AIF Rulebook amendments should remove the principal impediments which fund sponsors have encountered in launching ELTIF products in Ireland.</p>
<p>3 October</p>		<p><b>MiFID II Product Governance – Revised ESMA Guidelines in effect</b></p> <p>The guidelines have been revised to include the specification of any sustainability-related objectives a product is compatible with; the clustering approach; the determination of a compatible distribution strategy where a distributor considers that a more complex product can be distributed under non-advised sales; and the periodic review of products, including the application of the proportionality principle. See <a href="#">here</a> for further details.</p>	<p>MiFID firms and fund managers with a MiFID top-up licence must ensure compliance with the updated guidelines ahead of the effective date.</p>
<p>1 December</p>		<p><b>Operational Resilience Guidelines – deadline</b></p> <p>The Central Bank's Cross-Industry Operational Resilience Guidelines were published on 1 December 2021 with a two-year transitional period. See <a href="#">here</a> for further details.</p>	<p>The Central Bank expects firms to “actively and promptly” address operational resilience vulnerabilities and be in a position to evidence actions/plans to apply the Guidelines, at the latest, within two years of issuance of the Guidelines (i.e., 1 December 2023).</p>
<p>Q4 (exact date TBC)</p>		<p><b>Consultation on Business Standards under Individual Accountability Framework (IAF)</b></p> <p>Updated business standards to be published as part of the Central Bank's review and consultation on</p>	<p>Following publication of the IAF Act, Central Bank IAF consultations, and updated F&amp;P procedures, fund managers should progress compliance plans and work programmes taking account of the</p>

29 December	updates to the Consumer Protection Code. See <a href="#">here</a> for further details.	proposed timeline for implementation of the IAF.
	<b>First scheduled IAF application date</b> The F&P enhancements and individual conduct standards under the Central Bank's IAF are scheduled to apply. See <a href="#">here</a> for further details.	

## ELTIF 2.0 – Welcome Clarity on Irish Implementation

The Central Bank will consult later this year on its proposal to update its AIF Rulebook to facilitate implementation of the ELTIF 2.0 Regulation.

This is timely, ahead of the enhancements under the ELTIF 2.0 Regulation, taking effect on 10 January 2024. ELTIFs, especially following the package of reforms and with the maturing trends in the retailisation of private funds, are primed as the “go-to” product option for distributing private market/real asset strategies to retail investors. Notably, the ELTIF product label comes with the unique advantage of an EU-wide product passport extending to retail investors (versus the more limited professional client only passport under AIFMD).

The Central Bank has indicated that it is proposing to publish a dedicated ELTIF chapter in its AIF Rulebook. ELTIFs will be a discrete AIF product type separate to Ireland’s qualifying investor AIF (QIAIF) and retail investor AIF (RIAIF) product options. It has also been indicated that the authorisation process for an ELTIF will broadly follow the existing authorisation processes for QIAIFs and RIAIFs. This is a welcome development and paves the way for Irish domiciled ELTIFs to be authorised using the full suite of Irish dedicated fund legal structures, such as the ICAV and Investment Limited Partnership. The AIF Rulebook amendments will remove the principal impediments which fund sponsors have encountered in launching ELTIF products in Ireland.

Later this year (most likely in October), the Central Bank will engage with industry by launching a public consultation on the ELTIF-related changes proposed for the AIF Rulebook. It is expected that the consultation period will be an abridged one (with an indication of approximately 4-6 weeks). This consultation will not focus on the product level rules since it is appreciated that these matters are comprehensively dealt with by the ELTIF 2.0 Regulation. We expect therefore, in line with the maximum harmonisation nature of the ELTIF 2.0 Regulation, that there should be no gold plating. Rather, the Central Bank has indicated the proposed ELTIF chapter will complement the ELTIF 2.0 Regulation. The other updates for the AIF Rulebook are expected to focus on supervisory and operational matters, such as expected disclosures and regulatory reporting.

### Next Steps

The expectation is that the revisions to the AIF Rulebook should be in place in advance of 10 January 2024.

## Sustainability CSA: Central Bank Issues First-Phase Questionnaire

On 6 July 2023, ESMA [launched](#) a CSA on fund managers' compliance with SFDR, the Taxonomy and UCITS/AIFMD sustainability-related rules. First-phase CSA engagement from the Central Bank began on 15 August 2023 with the issuance of a detailed questionnaire to those Irish fund managers selected for participation in the CSA. Analysis of the CSA questionnaire, which focusses on compliance with SFDR website and periodic disclosure rules and sustainability risk management rules, is set out below.

While not all Irish fund managers are in scope of the CSA, the questionnaire is a strong indication of regulatory focus and likely target areas for CSA findings which, as per previous actions, will likely issue to all fund managers in due course along with a requirement for gap analyses and action plans to rectify any gaps identified.

## Sustainability Risk Integration

As part of the CSA, selected fund managers are required to provide policies, processes and procedures evidencing governance structures and operational systems in place for identifying, measuring, and managing the impact of environmental and social factors on investment returns i.e., sustainability risks.

Fund managers must also provide the time commitment of those responsible for managing sustainability risks, both as a percentage of their overall time commitment and of the fund manager's total number of full-time equivalents (FTEs). Details must also be provided of those responsible for managing greenwashing risk, how it is defined, accounted for and how conflicts of interest which can give rise to this risk are managed.

**Relevant requirements:** senior management of both UCITS managers and AIFMs are responsible (under respective governing regimes) for the management of underlying funds' exposure to sustainability risks, ensuring relevant functions are properly resourced with the necessary technical expertise and conflicts of interest arising from the integration of sustainability risks are identified and managed.

**Comment:** While considered by ESMA during the industry consultation process, neither UCITS nor AIFMD sustainability-related rules provide for the designation of a specific, qualified individual with a minimum time commitment to the management of sustainability risks of underlying funds' investments. Fund managers can therefore, incorporate sustainability and greenwashing risk management into existing governance and organisational structures for fund risk management, in accordance with the UCITS and AIFMD risk management rules. In respect of greenwashing risk, it may be of benefit to take note of the ESAs' definition of greenwashing as set out in ESMA's recent report on the topic. See briefing on ESMA's report in our [June 2023](#) update for further details.

## PAI, remuneration and website disclosures

This part of the CSA focuses on remuneration, entity-level consideration of principal adverse impacts (**PAIs**) and maintenance of website disclosures.

Fund managers must evidence compliance with the requirement for remuneration policies not to encourage excessive sustainability risk-taking. For those managers which consider PAIs, either on a mandatory or voluntary basis, a link to the required PAI statement must be provided, along with evidence of translations of the summary section into relevant host Member State languages and disclosure of the degree of alignment with the Paris Agreement objectives. A description of the guidelines/procedures in place to ensure that sustainability related information published on the website is up to date must also be provided.

**Relevant requirements:** SFDR entity and product-level PAI consideration disclosure rules, remuneration transparency rules, website disclosure maintenance rules.

**Comment:** SFDR Level 2 (Article 9) requires the PAI statement to detail the degree of fund managers' alignment with the Paris Agreement objectives and the PAI indicators used to measure such alignment. The ESAs' first annual report on compliance with entity-level PAI disclosure rules (July 2022) highlighted low levels of compliance with these requirements and identified disclosures, by those that did comply, as vague, too high level, and lacking indicators used to measure portfolios' decarbonisation paths. The ESAs positively cited alignment disclosures which include 'credible decarbonisation objectives, upstream and downstream emissions, setting out scale and timeline for action to achieve the trajectories consistent with the Paris Agreement, alignment specific investments with carbon neutral trajectories'.

## ESG labels, net-zero strategies and investor engagement

The product-level CSA questions focus on Article 8 and 9 funds' use of ESG labels, net-zero/carbon neutrality claims and engagement strategies. Each of these topics featured heavily in ESMA's progress report on greenwashing to the Commission in May 2023. The CSA seeks evidence of controls in place to ensure ESG claims can be substantiated, consistent use of ESG metrics and data, and data limitations do not impact achievement of ESG characteristics or objectives.

For funds with net zero or carbon neutral strategies, the CSA requests any disclosures as to asset coverage, time horizons and targets, emissions measurement methodologies, action plans, potential obstacles and associated mitigants and reference points for forecasting portfolio emissions.

For those employing engagement strategies, the CSA requires details of how product-level strategies differ from managers' entity-level strategies as well as evidence of relevant disclosures e.g., PAI statements, engagement policies with milestones and outcomes, voting policies, any relevant engagement reporting or relevant statistics on voting and their outcomes.

**Relevant requirements:** website data disclosure rules (SFDR Level 2 Article 31-35 & 44-48)

**Comment:** responses will inform ESMA and NCAs as to the likelihood and extent of greenwashing across the funds sector, any evidence of which will be included in ESMA's final report on greenwashing to the Commission, due by May 2024. In its May 2023 greenwashing progress report, ESMA sets out key risk areas and expectations for avoiding greenwashing. The progress report is a useful reference, both for avoiding this risk and meeting relevant regulatory expectations. See our [June 2023 briefing](#) for further details of ESMA's May 2023 greenwashing report.

### Fund names, target v actual sustainable/Taxonomy aligned investments and methodologies

The CSA requests details in respect of a particular fund/sub-fund under management, as selected and specified by the Central Bank in its CSA engagement with relevant fund managers. The focus of such fund-specific questions is on the name of the fund (whether it reflects the sustainable characteristics/objectives); any sustainable investment (including DNSH) methodology employed for the fund; compliance with website disclosure rules; and explanations of any differences (>5%) between pre-contractual minimum commitments to sustainable/Taxonomy aligned investments and actual levels of such investments along with any necessary corrective measures taken.

Specifically for Article 8 funds with sustainable investments and Article 9 funds, the CSA requires fund managers to explain any adopted DNSH methods which do not take the mandatory PAI indicators into account as well as confirmation of the optional PAI indicators used for DNSH purposes. If the specified fund considers PAI at product level (in accordance with SFDR Article 7), the CSA also requests confirmation of whether the fund's use of the PAI indicators for DNSH is consistent with its use of the indicators for the purpose of considering investments' PAIs.

**Relevant requirements/regulatory expectations:** draft ESMA guidelines on fund names (see our [May 2023 briefing](#) for further details), [ESMA May 2022 supervisory briefing on sustainability risks and disclosures](#), periodic sustainable/Taxonomy-aligned investment disclosures (SFDR Level 2 Articles 51, 55, 59, 62)

**Comment:** while not yet finalised, ESMA's draft fund name guidelines require fund names not to be misleading and the use of ESG terms in fund names to be supported by the adoption of ESG characteristics or objectives. The fund name guidelines are expected to be finalised in early October this year. In its May 2022 supervisory briefing, ESMA confirmed that Article 8/9 funds' periodic disclosures should 'match (or fulfil)' pre-contractual commitments and sustainable investment DNSH methodologies should at least include the mandatory PAI indicators under SFDR Level 2.

### Next Steps

Fund managers in scope of the CSA have been given a four-week deadline for responding to the questionnaire. While the CSA is scheduled to run until Q3 2024, the Central Bank notes the deadline is necessary to facilitate efficient implementation of the CSA which, given the timeline, is expected to comprise several phases.

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## Crypto-Asset Developments

### MiCA: EU Updates

The Markets in Crypto-Assets Regulation (**MiCA**) which entered into force on 29 June 2023 provides a framework for EU markets in crypto-assets, including transparency, authorisation, customer protection and anti-market abuse rules. Since MiCA entered into force, several related consultations have been launched, both domestically and at EU level.

On 12 July 2023, ESMA published the first of three consultations under MiCA, with proposed rules for crypto-asset service providers (**CASPs**) on authorisation, identification, and management of conflicts of interest and complaints management. The consultation period runs until 20 September 2023.

The EBA has also issued consultations under MiCA including on requirements for Asset Referenced Tokens (**ARTs**) and Electronic Money Tokens (**EMTs**).

### MiCA: Irish Updates

The Department of Finance published a consultation on the exercise of national discretions under MiCA, including in respect of public disclosure of inside information; administrative penalties and other administrative measures; transition period; and simplified authorisation procedures. The consultation period runs until 15 September 2023.

## Global Crypto-Asset Updates

On 17 July 2023, the FSB published a finalised version of its global regulatory framework for crypto-asset activities with high-level recommendations for the regulation, supervision and oversight of crypto-asset activities and markets; and revised high-level recommendations for the regulation, supervision, and oversight of global stable-coin arrangements.

Due to recent turbulence in the crypto market, the FSB has, in its finalised framework, strengthened both sets of high-level recommendations in three areas: (i) safeguarding of client assets; (ii) conflicts of interest; and (iii) cross-border cooperation.

## MiCA Implementation Timeframe

<b>29 June 2023</b>	MiCA enters into force.
<b>12 July 2023</b>	ESMA and EBA publish first consultation packages.
<b>Q3 2023</b>	ESMA and EBA to publish second consultation packages.
<b>Q4 2023</b>	EBA expects to have published all remaining consultation packages before the end of 2023.
<b>Q1 2024</b>	ESMA expects to publish a third consultation package.
<b>30 June 2024</b>	The rules of stable-coins (Title III) and (Title IV) apply.
<b>30 December 2024</b>	MiCA applies in full.

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