Bringing ETF's to Market

Listing in Europe

DILLON EUSTACE

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The European ETF Market

The complex nature of the European marketplace

Recent years have witnessed the significant growth in the European ETF market. Assets invested in the ETFs industry in Europe amounted to $1.42 trillion in December 2022. with 2,937 products, with 11,846 listings, assets of $1.42 trillion, from 95 providers listed on 29 exchanges in 25 countries at the end of December 2022 (Source: ETFGI).

Recognising the characteristics of the European market at an early stage is critical. The market differs significantly to that of the US, is geographically diverse and driven by institutional investment.

The European ETF landscape spans a range of EEA and non-EEA countries, involving numerous regulators, exchanges and local requirements. There are therefore, significantly more steps involved in selling an ETF across European markets than for example, in a typical US ETF launch.

In Europe ETFs are established as UCITS products, a globally recognised brand with a distribution passport throughout the 30 EEA states. However, UCITS must still be locally registered to market in each Member State in which they are to be sold, with a local listing preferable in most markets.

Each jurisdiction may have additional requirements to consider. Marketing in non-EEA European countries will generally require registration with the local regulator, which generally recognise the UCITS brand, but will impose local requirements.

European investors prefer local listings, and while there is a degree of cross-jurisdictional consolidation, ETFs generally list on a range of separate exchanges across Europe. Numerous local listings result in the fragmentation of liquidity into small discrete pools. In reality, on exchange trading activity is concentrated on a handful of the more recognisable exchanges, with OTC trading comprising up to 70% of all transactions in the European marketplace. Transparency is limited by a lack of trade reporting in the ETF sector, with approximately half of all ETF trades currently unreported, although this has improved due to MIFID II trade reporting requirements and is in scope of proposed updated to MiFIR regulation.

This memorandum aims to serve as a guide through the process, key considerations and differences in bringing ETFs to market and to listing across Europe.

Dillon Eustace ETF Team

Dillon Eustace has a dedicated ETF team, including partners and senior associates from the financial services, listing and fund registration teams. We have established passive and active ETFs for a range of global providers, listed on multiple European and global exchanges. Through our international reach and network, we offer our clients one stop expertise in bringing their products to market.

Offering ETFs in Europe

Registration in each market

The first step in selling across Europe involves the registration of the ETF for sale in each jurisdiction in which it is to be marketed or listed. Registration is facilitated under a UCITS passport regime which allows UCITS to be sold on a retail basis throughout the EEA. The UCITS regime provides a 10 day timescale for local registration in each Member State, and is undertaken directly through the ETF's Home Competent Authority (the Central Bank of Ireland ("CBI") in the case of Irish UCITS). However, many jurisdictions impose additional requirements, which should be considered for each Member State and which may extend this timeline.

Switzerland and the UK, two of the more popular listing jurisdictions, are not within the EEA, and are therefore outside of the scope of the UCITS Directive. The UK closely follows the EEA notification model, while registration with the local regulator in Switzerland, FINMA, takes 30 days. It is possible for UCITS ETFs to sell to institutional investors in Switzerland without a local listing.

Local Listings

Following registration for sale, ETFs are usually cross-listed on a number of European markets as investors generally have a preference for local listings. It is important to be aware that listing requirements and regimes at each exchange can differ substantially and will involve separate listing applications.

The listing process in each jurisdiction differs considerably, but generally involves the appointment of local service providers (as appropriate) – listing sponsor, market makers, distributors and the completion of a formal application to the exchange for listing and trading.

Euronext (Amsterdam, Brussels, Dublin, Lisbon, Paris, Milan, Oslo) is the largest exchange platform in Europe. Other popular exchanges include the London Stock Exchange ("LSE"), Deutsche Boerse, and SIX (Switzerland). Borsa Italiana was recently acquired by the Euronext group and is being merged into the Euronext platform.

Recognising these practical issues, a number of consolidations and co-operative initiatives among European exchanges aim to simplify and offer practical solutions to trading ETFs in a number of key jurisdictions. For example, the Euronext exchange platform now offers ETF trading across a range of regulated markets in Amsterdam, Brussels, Dublin, Oslo, Lisbon and Paris (with Milan pending). Similarly, some exchanges, such as the LSE, offer a simplified access route for ETFS which are listed on EEA recognised exchanges, such as Euronext Dublin.
We look at two of the key exchanges below, and summarise the key elements of listing and trading on the principal European markets:

The London Stock Exchange

To date the LSE has provided two routes to market for ETFs, a full London listing involving the UK Listing Authority approval or a listing called an "admission to trading" which is a simplified route based on the ETF being listed on another acceptable EEA exchange, such as a listing on Euronext Dublin. All ETFs, whether fully listed on the LSE or passported from another listing, are traded on the same LSE ETF market segment, therefore the ETFs are identical to investors in terms of profile and trading. There are significant advantages including time and cost savings to using the simplified passport to market. This is by far the most popular route to market and is openly promoted by the LSE.

As the UK is no longer within the EEA post Brexit, access to market in the UK is currently only available only to funds which were authorised to market in the UK prior to Brexit and which made application for the UK Temporary Permissions Regime (TPR) until such time as the new UK fund recognition regime, the Overseas Fund Regime ("OFR") comes into effect, which could be as late as 2025. Therefore, access to listing on the LSE is currently limited to funds or umbrellas which are already in the TPR or which are launching newly established subfunds which may be added to their existing TPR permission.

There is currently no straightforward alternative route for registration of new UCITS products in the UK after the Brexit Deadline. Currently the only route is a full LSE listing, which is costly and can take a number of months. The proposed OFR, will proposed a straightforward route to market in the UK for retail products in time, but this is not expected to be in place prior to end 2026.

Euronext

The Euronext multi-jurisdictional exchange platform offers access to a range of European venues through one single entry point. Euronext operates regulated markets in Amsterdam, Paris, Brussels, Dublin, Lisbon, Oslo. It is also currently merging Borsa Italiana into the Euronext platform.

Euronext offers a full listing through Euronext Dublin and the process for admission to trading on the Euronext markets in Paris and Amsterdam is very straightforward, taking approximately one week and offers significant liquidity in trading ETFs.

Euronext does not charge any annual trading fees for new applicants in the first year of admission, nor in the second/third year where AUM is less than €50m. single Annual Fee is applied based on the value of assets under management, and regardless of the number of Admissions on Euronext Securities Markets (excluding Milan and Dublin).

	Possible to sell in country without listing?	Local Registration for Sale	Local Listing Sponsor Required	Listing Mechanism and Timing	Market Maker Required	Settlement System	Note
London Stock Exchange	Yes under TPR / section 272 approval only Local listing preferred	Local Registration for Sale FCA 10 days	Yes Local Listing Particulars required	Allow 2 months to engage with sponsor and UKLA	At least 1	Euroclear UK & Ireland, Euroclear Bank. Euroclear ICSD, DTCC, Monte Titoli	Simplified listing process if listed on another EEA exchange. No UKLA approval, no local Listing Sponsor and no Local Listing documentation required. EEA listings also trade on main ETF market segment with locally listed ETFs. Allow 2 weeks for listing application for EEA listed ETFs. **See Brexit Note**
Deutsche Boerse	Yes under TPR / section 272 approval only Local listing preferred	BAFIN 10 days.	Yes No requirement for local Listing Particulars	"Fast-track" - Allow 8 business days	At least 1	Clearstream, ICSD	Simplified listing possible if listed on another EEA exchange. However, as such EEA listings do not trade on the ETF segment, most ETFs chose a full DB listing.
SIX	Yes, only where ETF marketed to Institutional Investors Local listing preferred	FINMA 30 days from filing with FINMA.	Yes No requirement for local Listing Particulars	Sponsor applies to SIX. Allow 20 business days	At least 1	SIX SIS Euroclear ICSD Clearstream	No simplified listing available.
Borsa Italiana Euronext Milan	Yes under UCITS passport Local listing preferred	CONSOB 10 days	Yes Italian translation of summary required	Issuer and Rep makes application Allow 3 weeks	At least 1	Monte Titoli ICSD	No simplified listing available. Acquisition by Euronext will have implications
Euronext Dublin	Yes under UCITS passport	Immediate on authorisation of Irish UCITS	Yes	Allow 2-3 weeks	No active trading – technical listing	N/A	Dublin listing is basis for simplified passport to trading on LSE
Euronext Amsterdam / Paris / Brussels / Lisbon / Oslo	Yes, under UCITS passport	AMF/AFM 10 days	No No requirement for local Listing Sponsor	Application can be made by issuer or Rep. Allow one week	At least 1	Euroclear Bank, range of European CSDs ICSD	Simplified passport available from other EEA listing.

Local Differences

Aside from the mechanics of bringing ETFs to market in multiple jurisdictions across Europe, there are a range of operational considerations. These include proprietary settlement systems, currency and reporting requirements for ETFs in the European context which warrant particular attention.

Currency

ETFS can be traded in a range of global currencies on European exchanges. Most exchanges offer trading in a range of currencies.

Settlement

Settlement of the majority of Irish ETFs now takes place through the International Central Securities Depositary (ICSD) model. Traditionally, however, settlement of ETFs across Europe had been performed on a local basis through the domestic Central Securities Depositary of the exchange where the trade is executed. This fragmentation of settlement regimes can sometimes cause difficulties with respect to ETFs that are cross-listed on multiple exchanges.

The International Central Securities Depositary (ICSD) structure was developed to offer ETF issuers a simpler, centralised and efficient standardised European platform with a single settlement location for all exchanges on which the ETF is listed, overcoming the issues of local settlement in each jurisdiction.

Reporting

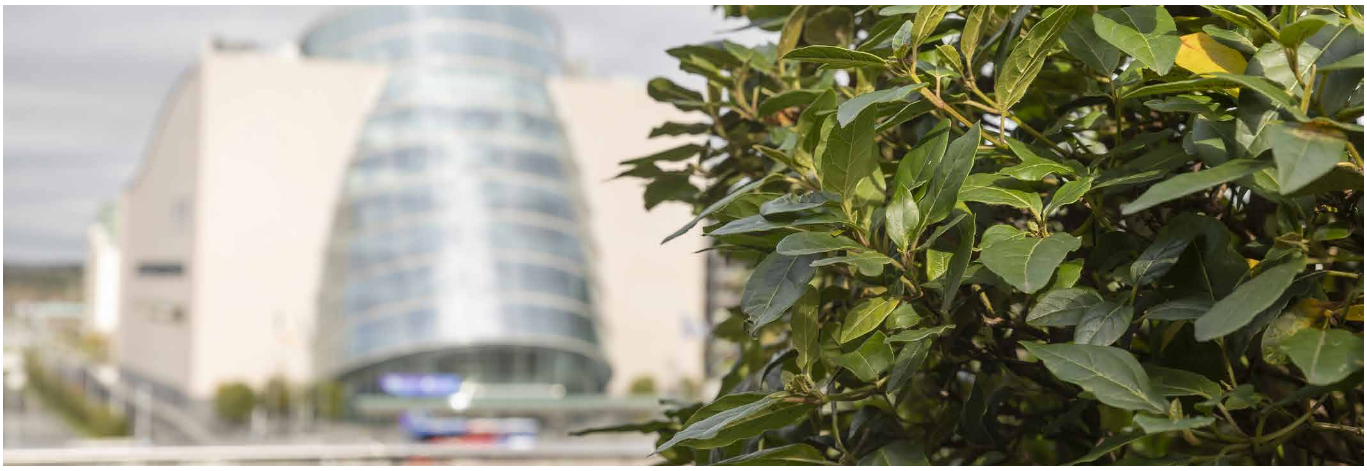
Exchanges vary considerably in their reporting requirements, and ETFs traded on multiple exchanges will be required to separately report in each jurisdiction. Most exchanges require reporting on general corporate changes, change of service providers and general corporate actions, etc. In general, exchanges require the publication of a regular iNAV throughout the business day. Certain exchanges, such as the LSE, have no requirements for reporting an iNAV.

Actively Managed ETFs – Portfolio Transparency

While consistently attracting significant interest, particularly among mutual fund asset managers interested in entering the ETF space, actively managed ETFs still represent approximately only 2% of total ETF AUM. (ETF Stream)

As in the US, a key concern for regulators of active ETFs is the requirement for disclosure of the portfolio of the ETF on a daily basis, with a 2022 IOSCO paper raising hopes for a more favourable approach. The requirements of European exchanges in this regard could not be more varied, and requirements are constantly reviewed as the topic is debated more widely by regulators and industry. Some exchanges, like the LSE and Euronext Dublin, already take a view that no portfolio disclosure is required for active ETFs. Other exchanges require the disclosure of portfolio with Deutsche Boerse permitting delays in reporting, and SIX requiring the filing of full daily PFC files which are not published.

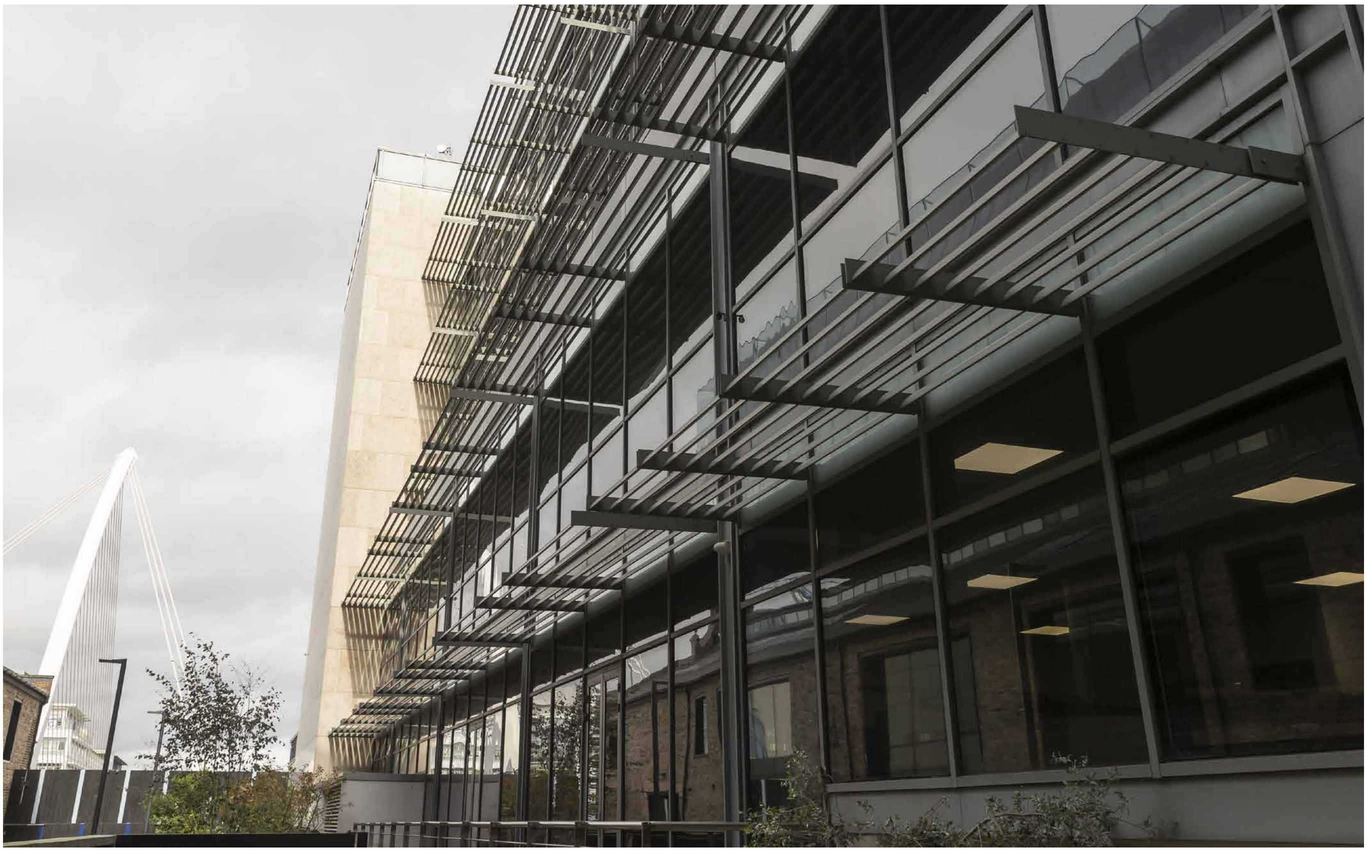
Recent SEC approvals of alternative new non-transparent ETF structures, may pave the way for similar products in Europe. It remains to be seen whether exchanges and regulators, at a national or European level, will agree on a consistent approach.



Local Differences

The following table summarises the requirements of various exchanges for portfolio and iNAV reporting obligations across the main exchanges for active ETFs:

	Portfolio Disclosure	iNAV
London Stock Exchange	No requirement	No requirement
Euronext Dublin	No requirement	Regular reporting of iNAV (no definition of regular)
Deutsche Boerse	Full Disclosure with a one month delay. Daily top 20 positions to be disclosed	Every 60 seconds
SIX	Full disclosure with maximum 4 week delay on Issuers website	Every 15 seconds
Borsa Italiana / Euronext Milan	No longer a requirement	Every 60 seconds
Euronext Dublin	No disclosure	Regular reporting of iNAV
Euronext Amsterdam / Paris / Brussels / Lisbon / Oslo	Disclosure	Regular reporting of iNAV



The Future

The future direction of the European ETF market will continue to be shaped by continual political and regulatory change.

ETF Share Classes

The CBI now permits the creation of ETF share classes within a standard UCITS fund. While the mechanics of structuring such a product from an operational perspective will be challenging, it is hoped that this will allow traditional non-ETF asset managers to offer their actively managed funds as ETF products.

Cross Border Distribution Directive

This directive, implemented across the EU from August 2021, aims to streamline and improve the cross border marketing of UCITS and other fund products throughout the EU. It will remove the requirement for local representatives in each Member State, and provide more transparency on local regulatory requirements and fees.

Brexit

The implications of Brexit are still unclear and likely to affect access to the UK market for some time. The FCA has proposed the framework for the new OFR which would allow UCITS to access to the market but the details and timing of this are very much undecided. The effect of this has been to temporarily halt access for new UCITS structures to the retail market.

Cross Listings

Innovation on cross listings, such as the passport to trading offered by the LSE and the consolidation of exchanges, such as the expansion of the Euronext platform will continue to simplify the mechanics of cross listing.

Retail Market

There are no solid statistics on ETF client type, but the consensus amongst industry players is that more than 80% of ETF assets in Europe are in the hands of institutional investors, such as private banks, wealth managers, hedge funds, pension funds, and insurers. It is hoped that innovations such as robo-advisors and investor education will increase the reach of ETF products to the retail market in Europe.

Regulatory Innovation

Regulatory innovation, such as EU wide directives like MiFID II, MiFIR and national legislation, will increase focus on transparency and reporting around ETFs. MiFID II has already significantly increased trade reporting for ETFs.

Industry consultation and engagement, as demonstrated by the comprehensive ETF consultation undertaken by the CBI in 2017 and their engagement in industry think-ins and discussion panels since shows a proactive engagement and fosters an inclusive and robust regulatory environment addressing industry requirements and investor protection elements.

It is likely that the local differences among European exchanges in disclosure and reporting requirements for ETFs, and particularly active ETFs, will converge further with more understanding of such products, possibly under IOSCO and ESMA guidance or through industry consultation. It is hoped that these regulatory developments together with comprehensive educational initiatives around ETFs will help push the ETF product in Europe to retail investors, which currently represent only a fraction of the market, as opposed to almost half of the ETF users in the US.

Further Information

Guide to UCITS ETFs in Ireland

https://www.dilloneustace.com/uploads/files/A20Guide20To20UCITS20ETF20in20Ireland20Nov.202016.pdf

Euronext Dublin

https://www.euronext.com/en/list-products/etfs/how-list-etfs-euronext-dublin

London Stock Exchange

https://www.londonstockexchange.com/raise-finance/etps/etfs?lang=en

Deutsche Boerse

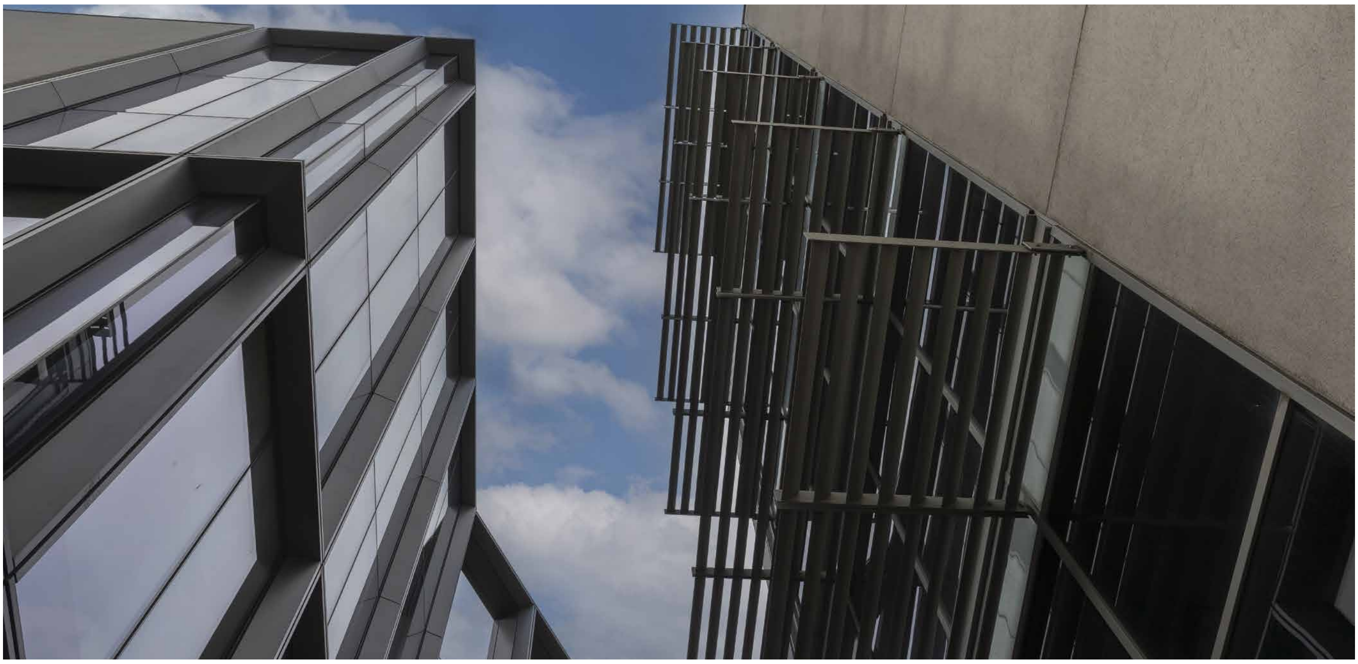
https://deutsche-boerse.com/dbg-en/media/deutsche-boerse-spotlights/spotlight/ETFs-easy-transparent-flexible-144148

Borsa Italiana

https://www.borsaitaliana.it/etf/etf/home.en.htm

SIX

https://www.six-group.com/en/products-services/the-swiss-stock-exchange/listing/etfs-etps-and-funds/etfs.html



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