



Funds

Quarterly Legal and Regulatory Update

Period covered: 1 April 2020 – 30 June 2020

TABLE OF CONTENTS

<u>APPROACHING DEADLINES</u>	<u>UCITS & AIFMD</u>	<u>PRIIPS</u>	<u>EMIR</u>
<u>BENCHMARKS</u>	<u>COVID-19</u>	<u>AML/CTF</u>	<u>OUTSOURCING</u>
<u>SUSTAINABLE GROWTH</u>	<u>MMFR</u>		

1. APPROACHING DEADLINES

Approaching deadlines		
Q 3 2020	Immediately	Clients to consider revising the SRRI in their KIIDS/KID in light of market volatility caused by COVID 19 if they have not already done so.
	30 September	MMF quarterly reports for Q1 and Q2 to be sent to the Central Bank for both Q1 and Q2.
	30 September	New Liquidity Stress Testing Framework will apply to all management companies and SMIC/internally managed AIF under the ESMA Guidelines on Liquidity Stress Testing.
Q 4 2020	11 October	UCITS management companies and AIFMs will be required to report all relevant SFT transactions concluded by funds under management with effect from 11 October 2020.
	27 November	UCITS management companies must ensure by 27 November 2020 that performance fees charged to UCITS funds only crystallise annually and are only paid once a year.

2. UCITS & AIFMD

2.1 Final Report - Guidelines on performance fees in UCITS and certain types of AIFs

On 3 April 2020, the European Securities and Markets Authority (**ESMA**) published a report on performance fees in Undertakings for the Collective Investment in Transferable Securities (**UCITS**) and certain types of Alternative Investment Funds (**AIFs**). A consultation on proposed Guidelines had been published on 16 July 2019.

This final report details the Guidelines on performance fees and explains how ESMA took the feedback received from interested parties into account. National Competent Authorities (**NCAs**) must indicate to ESMA within a two month period if they intend on complying with the Guidelines or not. They will then come into effect at the end of this two month period. The Central Bank revised the rules applicable to UCITS performance fees in June of last year which broadly align with the principles set down in the Guidelines. It also imposes similar rules on RIAIF funds.

A Dillon Eustace article entitled “ESMA Finalises Guidance on Performance Fees for Funds Marketed to Retail Investors” can be accessed [here](#).

As set out in the Dillon Eustace article under the heading “Timing of the Guidelines” a transitional period will be afforded to Management Companies of existing funds which already provide for a performance fee. The Management Companies of all new in-scope funds established after the application date of the Guidelines and all existing in-scope funds which are subject to a performance fee for the first time after that date must comply with its provisions immediately.

The final report can be accessed [here](#).

Action

At present, we do not yet know how exactly the Guidelines will be implemented in Ireland. Once the Central Bank has confirmed how it intends to implement the Guidelines, Management Companies will need to determine what changes, if any, will need to be made to the performance fee model and methodology currently used by UCITS and “in scope” AIFs.

2.2 Publication of draft legislation amending the UCITS Directive and AIFMD Frameworks

On 8 June 2020, the European Commission published for consultation draft Commission Delegated Regulations to amend UCITS Directive (Directive 2009/65/EC), the Alternative Investment Fund Managers Directive (Directive 2011/61/EU) (**AIFMD**) as part of the EU's action plan on sustainable finance to reorient capital flows towards sustainable investments to achieve sustainable and inclusive growth. This follows the publication of ESMA's technical advices on integrating sustainability risks and factors in the UCITS Directive and AIFMD to the European Commission in April 2019.

Under proposed changes, management companies will be explicitly required to integrate sustainability risks in the investment decision-making processes. The European Commission has given interested stakeholders until 6 July 2020 to provide feedback.

Under draft Commission Regulations, management companies will be required to comply with the following obligations, regardless of whether or not they manage ESG funds:

- assessment of all relevant sustainability risks when conducting due diligence on investments;
- identification of conflicts of interest which arise as a result of the integration of sustainability risks in processes, systems and controls;
- incorporation of the assessment and management of sustainability risk into the risk management policy and procedures of the management company;
- ensure that sustainability risk is taken into account in the organisational structure of the management company;
- ensure that the necessary resources and expertise required for the integration of sustainability risks are retained by the management company; and
- ensure that the principal adverse impact of investments on sustainability factors are taken into account (this is applicable to larger management companies and those who choose to voluntarily comply with the principal adverse impact reporting obligation under Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (**SDFR**)).

Under the current proposals, the obligations would apply 12 months after the date on which the legislation is published in the Official Journal.

A further analysis of the integration of sustainability risk into the UCITS and AIFMD framework is provided in our client briefing entitled “The New ESG Framework: Integration of Sustainability Risk” which is available [here](#).

The draft UCITS legislation can be accessed [here](#).

The draft AIFMD legislation can be accessed [here](#).

See Section [9.4](#) for further information on these Delegated Regulations.

Action

Management companies should monitor the progress of the draft Commission Delegated Regulations.

2.3 ESMA report stresses impact of costs on retail investor benefits

ESMA published its second annual statistical report on 6 April 2020 regarding the cost and performance of retail investment products in the EU.

According to the report, fund investors should be prepared for negative impacts on their investments in light of the COVID-19 pandemic. The report highlights the impact of costs on the return retail investors receive from various UCITS investments. The costs paid by these investors are significantly higher than those paid by institutional investors leading to lower final returns. Therefore, it is vital that clear information on costs is provided to investors.

Higher exposure risks will entail higher costs but access to data regarding these has been hampered by the lack of harmonisation across the EU in terms of national regulation. Differences in customer preference also presents as an issue when it comes to comparing Member States.

The full report can be accessed [here](#).

2.4 ESMA promotes convergence in the supervision of costs in UCITS and AIFs

On 4 June 2020, ESMA published a supervisory briefing on the supervision of costs in UCITS and AIFs. The supervisory briefing is addressed to NCAs. It is intended to promote convergence on the supervision of costs in UCITS and AIFs.

The briefing is divided into two main sections:

- (i) indicators which should be used by NCAs to identify “undue costs” and examples of same; and
- (ii) elements to be taken into account by the NCA when supervising the management company’s compliance to ensure that no “undue costs” are borne by the fund.

ESMA suggests that competent authorities should require management companies (being UCITS management companies and AIFMs and internally managed AIFs/SMICS) to adopt a pricing process which allows a “clear identification and quantification of all costs charged to the fund”. This includes not only fees paid to the management company but also those paid to third parties (such as depositaries/broker fees etc) and any fees directly or indirectly borne by the investors (such as entry and exit costs).

ESMA believes that this pricing process should allow NCAs to make sure that investors are not being charged undue costs. ESMA sets out 10 specific elements which should be incorporated into this pricing process. ESMA expects NCAs to consider its contents when supervising cost-related issues.

The ESMA briefing is stipulated to be non-binding on NCAs. However in its press release, ESMA noted that it will work with competent authorities to promote the application of the briefing by them and will review the level of convergence reached in 2021. This would appear to indicate that the Central Bank may begin to incorporate the contents of this briefing into its supervisory regime immediately.

A copy of the ESMA briefing paper can be accessed [here](#).

A copy of the ESMA release can be accessed [here](#).

2.5 Guidelines on certain aspects of the MiFID II compliance function requirements

On 5 June 2020, ESMA published guidelines on the MiFID II compliance function. These guidelines replace the ESMA guidelines on the same topic issued in 2012 and include updates that enhance clarity and foster greater convergence in the implementation and supervision of the compliance function requirements under Directive 2014/65/EU (**MiFID II**) and certain Delegated Regulations supplementing MiFID II.

The guidelines will enhance the existing standards by providing additional clarifications on certain specific topics, such as new responsibilities in relation to MiFID II's product governance requirements and further details on the reporting obligations of the compliance function.

The guidelines are addressed to (i) investment firms and credit institutions providing investment services or when selling or advising clients in relation to structured deposits; and (ii) UCITS management companies and AIFMs when they are providing MiFID "add-on services", such as portfolio management.

These guidelines apply from two months of the date of publication of the guidelines on ESMA's website.

A copy of the guidelines can be accessed [here](#).

2.6 European Commission publishes report on AIFMD

On 10 June 2020, the European Commission published a short report (the **Report**) on the application and scope of the AIFMD framework. Article 69 of AIFMD requires the Commission to provide the European Parliament and the European Council with an assessment of the functioning of the AIFMD. The Report follows an earlier report prepared by KPMG in January 2019.

The Report is relatively short on detail and does not include definitive proposals for the amendment of the AIFMD framework. Instead the Report mentions certain issues with the framework, including:

- **EU AIFM passport:** The Report finds that the efficacy of the EU AIFM passport is impaired by national gold-plating, divergences in the national marketing rules, varying interpretations of the AIFMD by national supervisors and its limited scope.
- **NPPRs:** The Report indicates that National Private Placement Regimes (**NPPRs**) differ among Member States and, more importantly, require AIFMs to implement only a very limited number of the AIFMD requirements. This creates an un-level playing field between EU and non-EU AIFMs. The Report further indicates that Member States have suggested further harmonising the NPPRs, whereas others consider that activating the AIFMD passport for third country entities, followed by a phasing-out of NPPRs, would be a better solution to this issue.
- **Depositaries:** The report indicates that the lack of a depositary passport is at odds with the spirit of the single market. Further the report indicates that there are fears of concentration risk where a single depositary could hold the assets of all AIFs established in a Member State.
- **Valuation rules:** The reports finds that there may be some issues with the binary nature of the valuation rules, whereby stakeholders understand that a combined use of internal and external valuers is excluded, as well as uncertainty around the liability of external valuers.
- **Investment in private companies:** The report finds that AIFMD rules on supervisory reporting, depositary, risk management and remuneration do not explicitly take into account all of the specificities of managing private equity investments.

The European Commission indicates that such issues “could possibly require further action at Union level to deepen the EU market for AIFs and respond to technological developments ensuring that the AIFMD legal framework is fit for purpose”.

A copy of the Report can be accessed [here](#).

3. PACKAGED RETAIL AND INSURANCE-BASED INVESTMENT PRODUCTS (PRIIPS)

3.1 EFAMA calls for urgent completion of PRIIP KID review to protect retail investors and support economic recovery

On 28 April 2020, the European Fund and Asset Management Association (**EFAMA**) issued a public statement in response to the European Supervisory Authorities’ (**ESAs**) final report on changes to the Packaged Retail and Insurance-based Investment Products (**PRIIPs**) Key Information Document (**KID**). It maintains that the PRIIP KID is “fundamentally flawed” and is providing misleading information to investors.

EFAMA states that it is crucial in a time of such economic uncertainty that all parties must come together to address these shortcomings and review the PRIIP KID.

The EFAMA statement can be read in full [here](#).

4. EUROPEAN MARKET INFRASTRUCTURES REGULATION (EMIR)

4.1 EMIR RTS on amendments to bilateral margin requirements

On 4 May, 2020, the ESAs published a revised version of the draft regulatory technical standards (the **RTS**) amending the Delegated Regulation on risk mitigation techniques for non-centrally cleared OTC derivatives (bilateral margining) under the European Market Infrastructures Regulation (Regulation (EU) 648/2012) (**EMIR**).

In response to the Covid-19 outbreak, the ESAs have updated the RTS to take into account the related decision from the Basel Committee on Banking Supervision (**BCBS**) and the International Organisation of Securities Commissions (**IOSCO**) to defer by one year the implementation of the remaining phases of the initial margin requirement. In addition, the draft RTS also provides that:

- The derogation from the requirement to exchange variation margin for single equity and index options is deferred until 4 January 2021.
- The derogation from the requirement to exchange initial margin for intragroup transactions within groups with third-country entities is deferred until 20 December 2020.
- The exemption from the mandatory exchange of variation margin in respect of physically-settled FX forwards and swaps between institutions and end-users where at least one of the counterparties is not a credit institution or a MiFID investment firm (or any third country equivalent). Therefore, the variation margin requirement does not apply to funds.

The Final Report can be accessed [here](#).

Please see the Dillon Eustace briefing entitled “Changes to the EMIR margining requirements” which can be accessed [here](#).

4.2 ESMA publishes updated EMIR Questions and Answers

On 28 May 2020, ESMA published an update to its EMIR Q&As.

A new Q&A 54 has been inserted into the “TR” Section concerning the reporting of OTC derivative contracts by a financial counterparty on behalf of the NFC- pursuant to the Article 9(1a) of EMIR as amended by EMIR REFIT.

In addition, Q&A 1 appearing in the “General Questions” Section has been revised with effect from 18 June 2020. This Q&A clarifies that generally a fund should be considered as the counterparty to a derivative transaction and not the fund manager. It also clarifies that in the context of an umbrella fund, generally the sub-fund of the umbrella should be considered as the counterparty.

The updated Q&A can be accessed [here](#).

5. BENCHMARKS REGULATION

5.1 European Commission consults on Delegated Regulations under BMR on sustainable finance issues

On 8 April 2020, the European Commission launched three separate consultations on delegated regulations setting out sustainability criteria for benchmarks provided in accordance with the Regulation (EU) 2016/1011 (the **Benchmark Regulation**) or (**BMR**). The consultation period closed on 6 May 2020.

One [regulation](#) sets out the minimum standards that benchmarks must satisfy in order to be termed “EU climate transition” and “EU Paris-aligned” benchmarks.

A second [regulation](#) sets out the explanation that should be included in the benchmark statement about how environmental, social and governance factors (**ESG**) factors are reflected in each benchmark / family of benchmarks.

The final [regulation](#) which sets out the minimum content which benchmark administrators must provide concerning how ESG factors are built into the benchmark methodology.

6. COVID – 19

6.1 ESMA Actions to mitigate the impact of COVID-19 on the deadlines for the publication of periodic reports by fund managers

On 9 April 2020, ESMA published a statement regarding the impact of COVID-19 on the deadlines for the publication of yearly and half yearly reports by fund managers.

ESMA seeks to emphasise that it is aware of the difficulties presented by this pandemic when it comes to the ability of fund managers to publish accounts regarding funds they oversee by the required deadlines. ESMA expects NCAs to adopt a risk-based approach and not prioritise supervisory actions against these market participants in respect of the upcoming reporting deadlines.

This statement clarifying publication deadlines and updating requirements for fund managers is available [here](#).

ESMA has also issued a new webpage on its website entitled “COVID-19”. This page was last updated on 18 June, 2020. This webpage sets out certain recommendations issued by ESMA (in co-ordination with the NCAs) which include:

- **Business Continuity Planning:** All financial market participants, including infrastructures should be ready to apply their contingency plans, including deployment of business continuity measures, to ensure operational continuity in line with regulatory obligations;
- **Market disclosure:** Issuers should disclose as soon as possible any relevant significant information concerning the impacts of COVID-19 on their fundamentals, prospects or financial situation;
- **Financial Reporting** – issuers should provide transparency on the actual and potential impacts of COVID-19 in their 2019 year-end financial report if these have not yet been finalised or otherwise in their interim financial reporting disclosures; and
- **Fund Management:** asset managers should apply the requirements on risk management, and react accordingly.

On 2 April, 2020 ESMA also updated its risk assessment for the EU financial markets to account for the impact of the COVID-19 pandemic. In this risk assessment, ESMA indicates that it sees a prolonged period of risk to institutional and retail investors of market corrections and very high risks across the whole of ESMA's remit.

A copy of the webpage can be accessed [here](#).

A copy of the risk assessment can be accessed [here](#).

On 20 May 2020, ESMA published a statement addressing the impact of the COVID-19 pandemic on the half-yearly financial reports of listed users. The ESMA statement focuses on a number of key issues, including; the importance of providing accurate and relevant information, the necessity to update information in from the latest annual accounts to reflect the impact of COVID-19 and inform stakeholders of risks and uncertainties and the provision of information relating to future projections, operations and the plans in place to mitigate the effects of the pandemic.

ESMA's statement is available [here](#).

6.2 Central Bank Actions to mitigate the impact of COVID-19

On 16 April 2020, the Central Bank of Ireland (CBI) introduced a new section of its website entitled "COVID-19 – Prudential Regulatory Flexibility Measures". The section sets out the regulatory flexibility that will be applied by the CBI in certain areas for credit institutions, securities markets, investment management, investment firms and fund service providers, insurers/reinsurers and credit.

In particular, funds, investment firms and fund service providers should visit the new webpage therein entitled "Securities Markets, Investment Management, Investment Firms and Fund Service Providers". On that webpage, the CBI indicates that it is:

- Allowing flexibility in respect of the remittance dates of a number of regulatory returns due from investment firms, fund service providers and investment funds over the COVID-19 period;
- Clarifying its expectations as regards the deadlines for the submission of assurance reports in respect of investment firms and fund service providers' arrangements for the safeguarding of client assets or investor money;
- Clarifying its expectations as regards risk mitigation programme (RMP) implementation dates;
- Postponing its regular assessments of the domestic regulatory policy framework in respect of securities markets, investment management activities and investment firms; and
- Clarifying the application of relevant announcements made by the ESAs to date.

The website page can be accessed [here](#).

6.3 Update on short selling bans by Austrian FMA, Belgian FSMA, French AMF, Greek HCMC and Spanish CNMV

On 18 May 2020, ESMA announced the non-renewal of the emergency restrictions on short selling and similar transactions by the Austrian FMA, Belgian FSMA, French AMF, Greek HCMC and Spanish CNMV.

ESMA's announcement is available [here](#).

In a further update on 11 June 2020, ESMA renewed its decision to require holders of net short positions in shares traded on EU regulated markets to notify their relevant NCAs if the position exceeds 0.1% of the issued share capital. This measure applies for 3 months from 17 June 2020 but does not apply to shares traded on the regulated market but where the principle venue for trading is in located in a third country.

The ESMA decision can be accessed [here](#).

6.4 CBI Regulated Firms and PCF vacancies due to COVID-19

In the CBI's industry [letter](#) of 30 April 2020, a number of issues are addressed in light of the coronavirus pandemic. One of these relates to the role of Pre-Approved Controlled Functions (PCFs) and the CBI acknowledged the possibility that a PCF may become incapacitated due to COVID-19.

To avoid any detriment to firms in such an instance, the CBI has permitted that once authorisation is sought, companies may appoint a suitable individual to a PCF role for a limited period of time where a vacancy arises due to illness. The CBI details the steps that should be taken when opting for this course of action in its [COVID-19 Regulated Firms – FAQ](#).

On 6 May, Dillon Eustace prepared an overview of the CBI requirements and the approach that firms should take in relation to temporary PCF appointments. This overview can be accessed [here](#).

6.5 Call for supervisory engagement with investment funds that have significant exposures to less liquid assets

On 14 May 2020, ESMA published a statement supporting the [recommendations](#) of the European Systemic Risk Board (ESRB) regarding combatting the COVID-19 crisis from a macroprudential perspective.

ESMA supports the call from the ESRB that NCAs coordinate with ESMA to supervise and engage with funds that are exposed to less liquid assets. These recommendations compliment the co-operation strategy that ESMA has been encouraging in this area and it will continue to support stability in the market.

The ESMA statement is available [here](#).

6.6 COVID-19: ESMA revised work programme for 2020

ESMA published its revised work programme for 2020 on 15 June 2020. ESMA had originally published its 2020 work programme in October 2019, however, it has now revised its work programme as a response to the COVID -19 crisis.

Annex I to the work programme sets out delays to ESMA's planned consultations due to COVID-19. Among other things, these relate to work on sustainable finance, investment management, credit rating agencies, securitisation and market integrity

ESMA's revised 2020 Work Programme is available [here](#).

7. ANTI-MONEY LAUNDERING (AML) AND COUNTERING THE FINANCING OF TERRORISM (CFT)

7.1 European Commission adopts new Delegated Regulation amending list of high-risk third countries under MLD4

The European Commission adopted a Delegated Regulation on 7 May 2020, amending the list of high-risk third countries that are deemed to have strategic deficiencies in their AML/CFT regimes.

This Regulation adds the following countries to the list of high-risk countries - Bahamas, Barbados, Botswana, Cambodia, Ghana, Jamaica, Mauritius, Mongolia, Myanmar/Burma, Nicaragua, Panama and Zimbabwe. It also removes the following nations from that list in light of improvements – Bosnia-Herzegovina, Ethiopia, Guyana, Lao People's Democratic Republic, Sri Lanka and Tunisia.

Notable omissions from the list include Saudi Arabia, Puerto Rico and the US Virgin Islands. (All were included on the draft list issued by the Commission in February 2019, which was rejected by the Council).

The Delegated Regulation was submitted to the Council of the EU and the Parliament to consider for approval. It shall apply from 1 October 2020. The Commission has provided a later application date for this Article because of the COVID-19 pandemic. This Regulation was published in the Official Journal of the European Union on 19 June.

The Commission explains, in a related press release, that this update is necessary as its list of high-risk third countries has not reflected the latest FATF lists since October 2018.

The text of the Regulation can be accessed [here](#).

7.2 European Commission staff working document on new methodology for identifying high-risk third countries under MLD4

On 7 May 2020, the European Commission published a staff working document setting out a new methodology for identifying high-risk third countries under the Fourth Money Laundering Directive ((EU) 2015/849) (**MLD4**).

The new methodology updates and replaces the Commission's June 2018 staff working document.

The new staff working document can be accessed [here](#).

7.3 European Commission publishes an action plan designed to strengthen the EU's framework for preventing money laundering and terrorist financing

On 7 May 2020, the European Commission published an action plan designed to strengthen the EU's framework for preventing money laundering and terrorist financing. This note provides an overview of the main features of the plan.

Please see the Dillon Eustace briefing paper entitled "Towards a common AML framework for the EU" which can be accessed [here](#).

7.4 Update: Central Beneficial Ownership Register for ICAVs, Unit Trusts and Credit Unions

On 25 June 2020 the Minister For Finance signed the EU (Modifications of Statutory Instrument 110 of 2019) (Registration of Beneficial Ownership of Certain Financial Vehicles) Regulations 2020 (the **New Regulations**) which assign responsibility for the CBI to maintain a central register of beneficial ownership of certain corporate and other legal entities (the **Central Register**).

Under the New Regulations, the CBI will be responsible for maintaining a central register of beneficial ownership in respect of Unit Trusts, ICAVs and credit unions.

The New Regulations confirms that all ICAVs and Unit Trusts in existence before 25 June 2020 must file relevant information on beneficial owners with the Central Register by 25 December 2020. The New Regulations also confirm that all ICAVs and Unit Trusts which come into existence on or after 25 June 2020 have 6 months from the date of “coming into existence” to file the relevant information with the Central Register. In the case of ICAVs, “coming into existence” refers to the date on which the registration order for the ICAV comes into operation and in the case of a Unit Trust, the date of authorisation by the Central Bank.

The New Regulations amend the previous European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 (the **Original Regulations**).

In the context of Unit Trusts, the New Regulations confirm that the 25% threshold for beneficial owners, which currently applies to corporate entities, now applies to Unit Trusts. The New Regulations also confirm that the responsibility for maintaining the beneficial ownership register for Unit Trusts rests with the management company of that Unit Trust.

Please see Dillon Eustace’s client briefing on this topic [here](#).

The New Regulations can be accessed [here](#).

The Original Regulations can be accessed [here](#).

Action	Boards to ensure that for each ICAV and Unit Trust “in existence” they have implemented operational measures to ensure that beneficial ownership information will be submitted to the Central Bank by 25 December 2020. For all other ICAVs and Unit Trusts, beneficial ownership information must be submitted to the Central Bank within 6 months from the date of “coming into existence”.
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8. OUTSOURCING

8.1 ESMA consults on cloud outsourcing guidelines

On June 3, 2020, ESMA published a consultation paper on Outsourcing to Cloud Service Providers (**draft Guidelines**). These apply to financial institutions under the direct or indirect jurisdiction of ESMA, which includes AIFMs and UCITS management companies.

ESMA proposes that the draft Guidelines, once finalised, will apply from 30 June 2021 to “all cloud outsourcing arrangements entered into, renewed or amended on or after this date”.

The draft Guidelines are partially inspired by the 2019 EBA guidelines on outsourcing. The Guidelines must be endorsed by EU NCAs and will not override more stringent rules applicable to certain categories of institutions.

The consultation on the draft Guidelines is due to close on September 1, 2020. Legacy arrangements will have to conform to the Guidelines no later than December 31, 2022.

ESMA’s consultation paper can be accessed [here](#).

9. SUSTAINABLE GROWTH

9.1 Update: Publication of the Taxonomy Regulation in the Official Journal of the EU

In December 2019, the European Council and the European Parliament reached political agreement on the text of a proposed Regulation on the Establishment of a Framework to Facilitate Sustainable Investment (2018/0178(COD)) (the **Taxonomy Regulation**).

This Regulation forms part of the European Commission's sustainable finance strategy. Its purpose is to provide clarity to businesses to what degree, economic activities are considered to be environmentally sustainable.

On 18 June 2020, the European Parliament officially adopted the Taxonomy Regulation. This was subsequently published in the Official Journal of the EU on 22 June 2020.

Under the Taxonomy Regulation, management companies of ESG funds which: (i) promote environmental characteristics, or (ii) invest in an economic activity which contributes to an environmental objective, will be required to disclose information on the relevant environmental objective being contributed to and how and to what extent investments of the fund are in economic activities that qualify as environmentally sustainable in both the fund's prospectus and its annual report.

The Taxonomy Regulation will come into force on 12 July 2020 however the prospectus and annual report disclosure obligations do not apply until 1 January 2022 (in the case of funds which contribute to climate change mitigation or climate change adaptation) or 1 January 2023 (in the case of funds which contribute to one of the four other environmental objectives set down in the Taxonomy Regulation).

Action

Management companies should assess whether or not they will be subject to disclosure obligations under the Taxonomy Regulation depending on the type of fund under management.

9.2 ESAs consult on draft RTS on ESG disclosures under SDFR

On 23 April 2020, the Joint Committee of the ESAs published a consultation paper (**Consultation Paper**) on proposed RTS under Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on SDFR.

In this Consultation Paper, the ESAs set down how they propose "financial market participants" inform investors about the consideration of sustainability factors in the investment decision-making and advisory processes. The proposals, which are set out in Section 4 of the Consultation Paper address the "principal adverse impact reporting" obligation set down under Article 4 of the SDFR which applies from 10 March 2021 and which must be complied with in full by large "financial market participants"¹ and otherwise applies to other financial market participants on a "comply or explain basis".

The ESA proposals include an obligation to use a template principal adverse impacts statement in order to ensure comparability of information published by financial market participants as well as setting down common indicators which the ESA suggest are used by all in-scope financial market participants to report on the principal adverse sustainability impacts of investments during the reference period. A link to the Dillon Eustace client briefing entitled "The New ESG Framework: Principal Adverse Impact Reporting" can be accessed [here](#).

The Consultation Paper also outlines the ESA's detailed proposals on the type of information which must be provided to investors in "ESG" funds in the prospectus and annual report and made available on the website of the fund's management company. The disclosure obligations will vary depending on the type of ESG fund in question.

¹ Defined as those financial market participants which on their balance sheet date exceed an average number of 500 employees during the financial year or financial market participants which are parent undertakings of a "large group" as defined under Article 3(7) of Directive 2013/34/EU which, on their balance sheet date, exceed an average number of 500 employees during the financial year on a consolidated basis.

These proposals are analysed in full in Dillon Eustace’s client briefing entitled “The New ESG Framework: Disclosure Obligations Imposed on ESG Funds” which can be accessed [here](#).

The ESAs have included a series of questions for stakeholders in the Consultation Paper on certain elements of the draft RTS and as a result the finalised regulatory technical standards may vary from the draft RTS. However, the draft RTS do provide some indicators as to the proposed direction of travel on the type of information which will need to be disclosed to investors in ESG funds under the new framework.

The deadline for comments on the proposals is 1 September 2020. The draft RTS will be submitted to the European Commission as a final report for endorsement before being published in the Official Journal of the EU. Six of the RTS must be delivered to the Commission by 30 December 2020 and one must be delivered by 30 December 2021.

Action

Management companies should monitor the progress of the draft RTS and initiate an action plan to assess the scope of the obligations imposed under the SDFR which will begin to apply from 10 March 2021.

9.3 Sustainable Finance: Commission launches consultation on Renewed Sustainable Finance Strategy

The European Commission launched a consultation relating to a renewed sustainable finance strategy on 8 April 2020. The aim of this strategy is to set out a roadmap to increase private investment in sustainable projects. It seeks to further support the European Green Deal and to manage and integrate environmental risks into the financial system.

Interested parties have until 15 July to submit responses which will be used to inform the EC’s strategy on sustainable finance. The consultation paper specifically asks whether the existing rules on fiduciary duties, best interests of investors/the prudent person rule, risk management and internal structures and processes in sectoral rules applicable to asset managers should be adapted to require them to consider and integrate adverse impacts of investment decisions on sustainability.

The EC consultation can be accessed [here](#).

On 9 April 2020, EFAMA published a statement welcoming the European Commission’s launch of the Renewed Sustainable Finance Strategy Consultation and emphasising the importance of taking the effects of the COVID-19 pandemic into account. It references the Sustainable Finance Action Plan of 2018 and the inconsistencies that have emerged in the subsequent legislation should be addressed by this Strategy. Sustainability should be the key focus, particularly in light of the uncertain economic environment and EFAMA intends to file a detailed response by 15 July.

EFAMA’s statement is available [here](#).

9.4 European Commission consults on delegated legislation integrating sustainability into UCITS Directive, AIFMD, MiFID II, Solvency II and IDD

On 8 June 2020, the European Commission published for consultation draft texts of six Commission Delegated Regulations and Directives as part of the EU’s action plan on sustainable finance. This consultation process closes on 6 July 2020.

The draft legislation incorporates sustainability issues and considerations into frameworks for the UCITS Directive (Directive 2009/65/EC), the AIFMD, the MiFID II Directive (Directive 2014/65/EU), the Solvency II Directive (Directive 2009/138/EC), and the Insurance Distribution Directive (Directive 2016/97/EU) (IDD).

Please see Section 2.2 above as regards the changes proposed to the UCITS and AIFMD frameworks.

Action

Management companies should monitor the progress of the draft Commission Delegated Regulations.

9.5 European Commission FAQs on Taxonomy Regulation and technical expert group on sustainable finance

On 10 June 2020, the European Commission published a set of FAQs about its work regarding EU Taxonomy and the EU Green Bond Standard. This included an update on the work of the technical expert group (**TEG**) on sustainable finance, established to assist in implementing the Action Plan on Financing Sustainable Growth. The FAQs cover topics such as:

- the legal process and how the taxonomy will be developed;
- details about whether the Commission will extend the taxonomy to cover social objectives and a "brown" taxonomy, covering activities that are environmentally harmful.
- how the platform on sustainable finance will be set up, and that it is likely to be operational by September 2020; and
- how the taxonomy should be used, including its interaction with the Non-Financial Reporting Directive (2014/95/EU).

The Commission's published FAQ's can be accessed [here](#).

10. MONEY MARKET FUND REGULATION (MMFR)

10.1 Central Bank publishes notice of intention in relation to ESMA's Stress Testing Guidelines under MMFR

On 30 April 2020, the CBI published a notice of intention regarding ESMA's Stress Testing Guidelines under the EU Money Market Fund Regulation (Regulation (EU) 2017/1131) (**MMFR**).

The ESMA [guidelines](#) were published on 3 March 2020. They apply in regards to Article 28 of the MMFR and establish common reference parameters for the stress tests conducted by money market funds (**MMFs**) or managers of MMFs.

The Central Bank of Ireland indicates in its notice of intention that it shall consult on the revisions to the Central Bank UCITS Regulations and AIF Rulebook. In the interim, the Central Bank expects full compliance with the Guidelines from 4 May 2020.

Its notice of intention can be found [here](#).

Action	From 4 May 2020, MMFs/ managers of MMFs must comply with the Guidelines.
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If you have any questions in relation to the content of this update, to request copies of our most recent newsletters, briefings or articles, or if you wish to be included on our mailing list going forward, please contact any of the team members below.

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This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.