October 2024

EUROPEAN UNION

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EUROPEAN SINGLE ACCESS POINT FOR FINANCIAL AND NON-FINANCIAL INFORMATION (ESAP)

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- ESAs publish Work Programme for 2025

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- ESMA updates Q&A on AIFMD
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- ESMA launches new consultations under MiFIR Review (RTS 22 and RTS 24)
- ESMA consults on changes in MiFID research regime
- ESMA updates Guidance under MiFIR Review
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PAYMENT AND SETTLEMENT SYSTEMS

- ESMA announces next steps for transition to T+1

REGULATION ON DIGITAL OPERATIONAL RESILIENCE FOR THE FINANCIAL SECTOR (DORA)

- EC adopts Delegated Acts on ICT-related incidents and cyber threats under DORA
- European Commission adopts Delegated Regulation on oversight activities under DORA

REGULATION ON MARKETS IN CRYPTO-ASSETS (MICA)

- EBA publishes final Guidelines on redemption plans under MiCAR
- European Commission adopts various RTS supplementing MiCA

SUSTAINABLE FINANCE / GREEN FINANCE

- ESMA updates implementation timeline on sustainable finance

BELGIUM

CODE OF CONDUCT

- FSMA specifies certain terms and conditions of the bank oath

DIRECTIVE ON SECURITY OF NETWORK AND INFORMATION SYSTEMS (NIS DIRECTIVE)

- The Federal Council of Ministers publishes press release on Belgium becoming the first EU Member State to fully implement NIS2

PAYMENT AND SETTLEMENT SYSTEMS

- Belgium publishes Ministerial Decree renewing the recognition of a centralised system for borrowing financial instruments

REGULATION ON DIGITAL OPERATIONAL RESILIENCE FOR THE FINANCIAL SECTOR (DORA)

- FSMA launches second awareness survey on the DORA

SHAREHOLDING / OWNERSHIP STRUCTURES

- NBB updates circular to financial institutions concerning the acquisitions, increases, reductions and disposals of qualifying holdings (01/10/2024)

SUSTAINABILITY

- Chambre des représentants publishes draft law transposing the CSRD

BRAZIL

CYBERSECURITY

- ANBIMA issues Cybersecurity Guidelines

FINANCIAL SUPERVISION

- ANBIMA presents new evaluation model for investment distribution certifications

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

- CVM and ANBIMA announce results of Agreement with institutions
- ANBIMA updates Transparency rules in remuneration of funds and new questionnaires
- CVM publishes Circular with interpretations of CVM Resolution 175 for FIDC and FII
- CVM Board approves 2nd Amendment in Agreement with B3 and ANBIMA regarding Fundos.Net
- ANBIMA proposes extension of deadline for filing appeal for punitive fines
- ANBIMA publishes proposal for informational transparency of remuneration rates of service providers under CVM Resolution 175

INVESTOR PROTECTION / CONSUMER PROTECTION

- ANBIMA publishes New Transparency Rules in remuneration to empower investors and help identify conflicts of interest

REMUNERATION

- ANBIMA publishes Informational Transparency of Service Provider Remuneration Rates

SUSTAINABLE FINANCE / GREEN FINANCE

- CVM releases Volume 2 of Sustainable Finance Series
- CVM publishes Circular Letter No. 6 with new Guidelines on Resolution 175

COLOMBIA

CAPITAL MARKETS UNION (CMU)

- URF publishes Decree 1239 in relation to different instruments that contribute to the liquidity of securities market

PAYMENT SYSTEMS

- Ministerio de Hacienda y Crédito Público informs that Draft Decree is published in relation to low-value payment ecosystems

FRANCE

CONSUMER PROTECTION

- AMF publishes Recommendation governing distribution of actively managed certificates to retail clients / L'AMF publie une Recommandation encadrant la distribution de certificats en gestion active à des particuliers

CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

- France publishes Ordinance No. 2024-936 on crypto-asset markets / La France publie l'ordonnance n° 2024-936 relative aux marchés des

crypto-actifs

- France publishes Ordinance No. 2024-937 on strengthening AML/CFT obligations for transfer of crypto-assets / La France publie l'ordonnance n° 2024-937 renforçant les obligations LBC/FT en matière de transfert de crypto-actifs

CUSTODIANS / DEPOSITARIES

- FPM publishes press release on supervisory measures implemented by depositaries concerning extra-financial ratios / FPM publie un communiqué sur les mesures de surveillance mises en place par les dépositaires concernant les ratios extra-financiers

CYBERSECURITY

- Government presents Bill on resilience of critical infrastructures and strengthening of cybersecurity / Le gouvernement présente un projet de loi sur la résilience des infrastructures critiques et le renforcement de la cybersécurité

EUROPEAN LONG-TERM INVESTMENT FUNDS (ELTIF)

- AFG publishes ELTIF 2.0 practical guide / L'AFG publie un guide pratique sur ELTIF 2.0

FINANCIAL REPORTING

- AMF publishes summary of SPOT controls on production, control and transmission of regulatory reports / L'AMF publie la synthèse des contrôles SPOT portant sur la production, le contrôle et la transmission des rapports réglementaires

FINANCIAL SUPERVISION

- AMF updates Guide for portfolio management companies and self-managed funds / L'AMF met à jour le Guide des sociétés de gestion de portefeuille et des fonds autogérés

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

- AMF publishes Guide to relations with statutory auditors of asset management companies and funds / L'AMF publie le Guide des relations avec les commissaires aux comptes des sociétés de gestion de portefeuille et des fonds
- Government presents Bill ratifying Ordinance on modernisation of alternative investment fund regime / Le gouvernement présente le projet de loi ratifiant l'ordonnance portant modernisation du régime des fonds d'investissement alternatifs

MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE AND REGULATION (MIFID II / MIFIR) / LE FPM PUBLIE UN GUIDE SUR MIFID II/ MIFIR

- FPM publishes MIFID II/MIFIR Guide

SUSTAINABLE FINANCE / GREEN FINANCE

- AFG reminds of end of transition period for ISR label / L'AFG rappelle la fin de la période de transition pour le label ISR

GERMANY

ANTI-MONEY LAUNDERING / COMBATING THE FINANCING OF TERRORISM (AML / CFT)

- BaFin updates Circular on high-risk countries

DIRECTIVE ON SECURITY OF NETWORK AND INFORMATION SYSTEMS (NIS DIRECTIVE)

- Deutscher Bundestag publishes draft NIS 2 Implementation (NIS2UmsuCG) and Cybersecurity Strengthening Act

EU SANCTIONING REGIME

- Deutscher Bundestag publishes draft Act amending Foreign Trade and Payments Act and other legal provisions

FINANCIAL SUPERVISION

- BaFin publishes update on test phase for XBRL submission reporting

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

- BaFin updates leaflet on suitability of managing directors according to KAGB
- BaFin publishes notification of UCITS Management Company for intended distribution of German UCITS
- Deutscher Bundestag publishes draft Act transposing AIFMD II

SUSTAINABLE FINANCE / GREEN FINANCE

- BaFin applies ESMA Guidelines on fund names

IRELAND

CONSUMER PROTECTION

- CBI issues Dear CEO Letter on MiFID II Marketing Communications Requirements

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

- CBI publishes Notice of Intention to implement ESMA Guidelines on funds' names using ESG or sustainability-related terms
- Department of Finance publishes Funds Sector 2030: A Framework for Open, Resilient & Developing Markets

ITALY

ANTI-MONEY LAUNDERING / COMBATING THE FINANCING OF TERRORISM (AML / CFT)

- Consiglio dei Ministri informs on European rules on TFR and crypto-assets

DIRECTIVE ON SECURITY OF NETWORK AND INFORMATION SYSTEMS (NIS DIRECTIVE)

- Italy transposes NIS2

PAYMENT SERVICES DIRECTIVE (PSD2)

- Banca d'Italia publishes Revision of PSD2 and coordination with MiCAR

REGULATION ON MARKETS IN CRYPTO-ASSETS (MICA)

- Banca d'Italia publishes Division of competences between Bank of Italy and CONSOB in application of MiCAR
- CONSOB and Bank of Italy comply with ESMA Guidelines on Fund Names

JERSEY

ANTI-MONEY LAUNDERING / COMBATING THE FINANCING OF TERRORISM (AML / CFT)

- JFSC updates countries and territories in AML/CFT/CPF Handbook

LUXEMBOURG

ACCOUNTING

- CSSF informs of CNC Q&A 24/033 publication on group consolidation and assessment of size criteria / La CSSF informe de la publication de la CNC FAQ 24/033 sur la consolidation des groupes et l'évaluation des critères de taille
- eCDF updates forms for 2025 annual accounts reporting / L'eCDF met à jour les formulaires pour le reporting des comptes annuels 2025

ANTI-MONEY LAUNDERING / COMBATING THE FINANCING OF TERRORISM (AML / CFT)

- CSSF updates FAQ on AML/CFT SRRC / La CSSF met à jour la FAQ sur la LBC/FT SRRC
- CSSF updates Annex of Circular CSSF 22/822 on high-risk jurisdictions / La CSSF met à jour l'annexe de la circulaire CSSF 22/822 relative aux juridictions à haut risque

AUDIT MATTER

- CSSF announces new procedures dedicated to Auditors / La CSSF annonce de nouvelles procédures dédiées aux commissaires aux comptes

DATA PROTECTION / GENERAL DATA PROTECTION REGULATION (GDPR) / EPRIVACY REGULATION (EPR)

- Chambre des députés publishes Bill approving Agreement with Switzerland on exchange of classified information / Chambre des députés publie le projet de loi approuvant l'accord avec la Suisse relatif à l'échange d'informations classifiées

EUROPEAN MARKET INFRASTRUCTURE REGULATION (EMIR)

- CSSF reminds about end of transition period under EMIR refit / La CSSF rappelle la fin de la période de transition du EMIR refit

FINANCIAL SUPERVISION

- CSSF publishes Circular CSSF 24/864 implementing EBA Guidelines on resubmission of historical data / La CSSF publie la circulaire CSSF 24/864 mettant en œuvre les lignes directrices de l'ABE sur la resoumission des données historiques

INFORMATION TECHNOLOGY (IT) / INFORMATION AND COMMUNICATIONS TECHNOLOGY (ICT)

- CSSF updates reminder of procedures of transmission for KID and official fund documents (MR/AI) / La CSSF met à jour son rappel des

modalités de transmission des KID et des documents officiels des fonds (MR/AI)

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

- CSSF publishes results of Thematic Review on supervision of delegation of portfolio management by IFMs / La CSSF publie les résultats de sa revue thématique sur la supervision de la délégation de la fonction de gestion de portefeuille par les GFI
- CSSF updates ELTIF application questionnaire / La CSSF met à jour le questionnaire de demande d'ELTIF
- CSSF reminds of new U1.1 reporting transmission procedures / La CSSF rappelle les nouvelles modalités de transmission du reporting U1.1
- CSSF publishes Circular 24/863 implementating ESMA Guidelines on funds' names using ESG terms / La CSSF publie la Circulaire 24/863 mettant en application les lignes directrices de l'ESMA sur les noms de fonds utilisant des termes ESG

NATIONAL BUSINESS REGISTER

- LBR announces new registration requirements for natural persons in Luxembourg / La LBR annonce de nouvelles conditions d'enregistrement pour les personnes physiques au Luxembourg

REGULATION ON DIGITAL OPERATIONAL RESILIENCE FOR THE FINANCIAL SECTOR (DORA)

- CSSF publishes results of DORA readiness survey / La CSSF publie les résultats de l'enquête de préparation pour DORA

MALAYSIA

DATA GOVERNANCE

- Malaysian Parliament passes Personal Data Protection (Amendment) Act 2024

SUSTAINABLE FINANCE / GREEN FINANCE

- BNM publishes Climate Risk Stress Testing Methodology Paper FAQs and Feedback Statement

NETHERLANDS

PENSION FUNDS

- AFM reminds pension funds to inform clients about risks

REGULATION ON DIGITAL OPERATIONAL RESILIENCE FOR THE FINANCIAL SECTOR (DORA)

- Rijksoverheid reminds of entry into force of Act on Promotion of Digital Resilience for Companies

RISK MANAGEMENT

- AFM publishes Guide on risk management using ESG data

SPAIN

DIRECTIVE ON THE PROTECTION OF PERSONS WHO REPORT BREACHES OF UNION LAW (WHISTLEBLOWERS DIRECTIVE)

- Spain publishes Royal Decree 1101/2024 approving Statute of Independent Authority for the Protection of Whistleblowers

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

- CNMV publishes Consultation for draft Circular amending three Circulars
- CNVM notifies ESMA of its compliance with Guidelines on fund names that use the term ESG or terms related to sustainability

PENSION SCHEMES

- Spain publishes Royal Decree 1086/2024 amending Regulation on pension plans and funds for promotion of occupational pension plans

SWITZERLAND

COMPANY LAW

- Switzerland extends offering on EasyGov.swiss / La Suisse étend son offre sur EasyGov.swiss

PRUDENTIAL SUPERVISION / SINGLE SUPERVISORY MECHANISM (SSM) / SINGLE RESOLUTION MECHANISM (SRM) / SINGLE RESOLUTION FUND (SRF)

- FINMA launches Consultation on FINMA Insolvency Ordinance / La FINMA lance une consultation sur l'ordonnance de la FINMA sur l'insolvabilité

UNITED KINGDOM

BENCHMARKS

- FCA publishes press release on the end of LIBOR

CONSUMER PROTECTION

- FCA publishes portfolio letter on expectations for financial advisers and investment intermediaries

CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

- UK Government publishes Consultation on draft CASP (Due Diligence and Reporting Requirements) Regulations 2025

FINANCIAL SUPERVISION

- UK publishes Financial Services and Markets Act 2023 (Commencement No. 8) Regulations 2024

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

- UK publishes draft CIS (Temporary Recognition) and CCP (Transitional Provision) (Amendment) Regulations 2024

PACKAGED RETAIL AND INSURANCE-BASED INVESTMENT PRODUCTS (PRIIPS)

- UK publishes draft Consumer Composite Investments (Designated Activities) Regulations 2024
- UK publishes draft PRIIPs (Retail Disclosure) (Amendment) Regulations 2024

SECURITISATION REGULATION

- UK publishes draft Securitisation (Amendment) (No. 2) Regulations 2024
- FCA updates page on securitisation rules

INTERNATIONAL

DERIVATIVE FINANCIAL INSTRUMENTS (DERIVATIVES)

- ISDA updates OTC derivatives compliance calendar

INTERNATIONAL FINANCIAL REPORTING STANDARDS (IFRS)

- IASB publishes call for investors and stakeholders to help shape project on accounting requirements for intangibles

CONTACTS

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EUROPEAN UNION

DIGITAL EURO

ECB publishes call for expressions of interest in innovation partnerships for digital euro

On 31 October 2024, the European Central Bank (ECB) published a call for expressions of interest in innovation partnerships for the digital euro.

As part of the preparations for the possible issuance of a digital euro, the ECB is establishing an innovation platform to collaborate with stakeholders. These may include small and large merchants, banks, other payment service providers, fintech companies, financial institutions, research institutes, technical experts and universities.

The main goals of the partnerships are to:

- demonstrate how "conditional payments" could be implemented on a technical level (i.e. between a simulated digital euro back-end and a front-end provider);
- provide the opportunity for participants to interact with simulated digital euro interfaces;
- explore additional use cases, ideas and visions that stakeholders may have for the digital euro.

The ECB is committed to exploring innovative use cases in retail payments, specifically for conditional payments, to prepare for the possible issuance of a digital euro. It also strives to share information about the current draft design of the digital euro with those who could become part of the digital euro ecosystem. There will be no selection process for pioneers, but applications will need to be approved to ensure they comply with formal requirements.

The deadline for applications is 29 November 2024.

EU SANCTIONING REGIME

ESMA publishes first consolidated report on sanctions

On 11 October 2024, the European Securities and Markets Authority (ESMA) published a first consolidated report on the sanctions imposed by NCAs in Member States in 2023.

In 2023, more than 970 administrative sanctions and measures were imposed across EU Member States in financial sectors under ESMA's remit. The aggregated value of administrative fines amounted to more than 71 million EUR. The highest amounts of administrative fines were imposed under the Market Abuse Regulation (MAR) and the MiFID II. Overall, the report highlights that there is still room for more convergence between NCAs in the exercise of their sanctioning powers.

The use of sanctions is only one of multiple tools in the NCA's supervisory toolkit, and supervisory effectiveness cannot be measured solely based on the number or value of the sanctions imposed in a Member State. The consolidated report does not provide a full picture of national enforcement activities; for example, these may also include more informal actions, and not all criminal sanctions are included in the scope of the report.

In line with the ESMA Strategy 2023-2028, the consolidated report contributes to supervisory and enforcement convergence and facilitates greater transparency on sanctions. Building on this report, ESMA will further foster the effective and consistent implementation of capital markets rules and ensure similar breaches lead to similar enforcement outcomes across the EU.

EUROPEAN MARKET INFRASTRUCTURE REGULATION (EMIR)

ESAs launch survey for entities in scope of IM model authorisation under EMIR 3

On 29 October 2024, the European Banking Authority (EBA) in cooperation with ESMA and EIOPA, launched a short survey addressed to entities within the scope of the initial margin (IM) model authorisation regime introduced by the upcoming revised European Market Infrastructure Regulation (EMIR 3).

EMIR 3 will introduce important novelties, such as:

- an authorisation regime for IM models used by counterparties in the EU;
- a new EBA central validation function for pro-forma margin models (such as ISDA SIMM);

- a supervision of IM models with greater focus on larger counterparties.

The EBA is seeking general information on entities within the scope of IM model authorisation, as well as specific information relevant for fee calculation and on initial margins and IM models used.

Entities currently subject to the requirement to exchange initial margin – in accordance with EMIR and under Article 36 of Commission Delegated Regulation (EU) 2016/2251 (the joint ESAs RTS on uncleared OTC derivatives) - and using at least one IM model to comply with that requirement, are expected to fill in the survey. All entities of a group that are subject to this requirement are expected to fill in the survey separately, at entity level.

Closer to the EMIR 3 publication, the EBA will publish on its website operational clarifications aimed to ensure a smooth, convergent entry into force of EMIR 3 requirements in the EU.

The deadline for submitting responses is 29 November 2024.

EUROPEAN SINGLE ACCESS POINT FOR FINANCIAL AND NON-FINANCIAL INFORMATION (ESAP)

ESAs finalise rules to facilitate access to financial and sustainability information on ESAP

On 29 October 2024, the European Supervisory Authorities (ESAs) published a Final Report on the draft ITS regarding certain tasks of the collection bodies and functionalities of the European Single Access Point (ESAP).

The ESAP is foreseen in Level 1 legislation to be a two-tier system, where information is first submitted by entities to the "collection bodies" – Officially Appointed Mechanisms (OAMs), offices and agencies of the EU, national authorities, among others – and then made available by the collection bodies to the ESAP. These ITS are the first milestone for the successful establishment of a fully operational ESAP.

The requirements are designed to enable future users to be able to access and use financial and sustainability information effectively and effortlessly in a centralised ESAP platform. The set up of the ESAP will be a key contribution to establishing the Savings and Investments Union. The ESAP will facilitate access to publicly available information relevant to financial services, capital markets and sustainability. The ESAP is expected to start collecting information in July 2026, while the publication of the information will start no later than July 2027. The Final Report has been sent to the European Commission for adoption.

EUROSYSTEM COLLATERAL MANAGEMENT SYSTEM (ECMS)

ECB announces launch of new ECMS on 16 June 2025

On 24 October 2024, the European Central Bank (ECB) published a press release on the Eurosystem Collateral Management System (ECMS) launch on 16 June 2025.

This date has been set by the ECB's Governing Council in order to provide sufficient time for national central banks of the euro area and their counterparties to thoroughly test the system in a stable environment to ensure user readiness. The decision to reschedule the launch of the ECMS from November 2024 was due to the need for additional preparation time identified by the Market Infrastructure Board to achieve a seamless launch.

FINANCIAL SUPERVISION

ESAs publish Work Programme for 2025

On 7 October 2024, the European Supervisory Authorities (ESAs) published their Work Programme for 2025.

The Joint Committee of the ESAs (EBA, EIOPA and ESMA) published its Work Programme for 2025, placing particular emphasis on ongoing collaboration to tackle cross-sectoral risks, promoting sustainability in the EU financial system and strengthening financial entities' digital resilience. More specifically, in addition to fostering regulatory consistency, adequate risk assessment, financial stability as well as the protection of consumers and investors, the ESAs will undertake joint work in 2025 to:

- provide further guidance on sustainability disclosures,
- make progress on financial entities' digital operational resilience by, among others, launching the oversight of critical ICT third-party providers and implementing the major ICT-related incident coordination framework, in accordance with DORA,
- monitor financial conglomerates,

- promote coordination and cooperation among national innovation facilitators with a view to facilitating the scaling up of innovative solutions in the financial sector, and
- address other cross-sectoral matters such as retail financial services, investment products and securitization.

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

ESMA updates Q&A on AIFMD

On 3 October 2024, the European Securities and Markets Authority (ESMA) updated its Q&A on Alternative Investment Fund Managers Directive (AIFMD).

In case of creation of a new compartment/share class in an existing UCITS in the course of its financial year or in case of creation of a new UCITS, can performance fees be crystallised after less than 12 months from the date of creation of such a new UCITS/sub-fund/share class (i.e., the date in which the share class is launched/seeded)?

No. Performance fees, if any, should be crystallised after at least 12 months from the creation of a new UCITS/compartment/share class. Moreover, paragraph 35 of the guidelines foresees that the crystallisation date should be the same for all share classes of a fund that levies a performance fee.

EU publishes Commission Delegated Regulation 2024/2759 supplementing ELTIF Regulation 2.0

BACKGROUND

ESMA had submitted to the European Commission draft regulatory technical standards supplementing several technical elements of the ELTIF Regulation 2.0 for approval earlier in 2024.

The final version of the RTS is certainly an improvement in comparison to the initial ESMA proposals. IFMs will now have more choice as to how they manage the liquidity situation for open-ended ELTIFs, or which LMT they use.

WHAT'S NEW?

n 25 October 2024, the European Union published the Commission Delegated Regulation (EU) 2024/2759 supplementing Regulation (EU) 2015/760 with regard to RTS that specify:

- when derivatives will be used solely for hedging the risks inherent to other investments of the ELTIF,
- the requirements for a redemption policy and LMTs,
- the circumstances for the matching of transfer requests of units or shares of the ELTIF,
- certain criteria for the disposal of ELTIF assets, and
- certain elements of the costs disclosure.

Minimum holding period

No strict requirements with respect to the duration of the minimum holding period of an ELTIF exist, but certain criteria IFMs should consider when they determine its length. IFMs could be requested by their local regulator to justify their position.

Minimum notice period & redemptions

No minimum notice period is imposed for redemptions. IFMs are however required to calibrate the maximum size of redemptions based on one of two options set out in the Annexes:

- Under Annex I, it is based on the redemption frequency and notice period.
- Under Annex II, it is based on the redemption frequency and the minimum percentage of UCITS-eligible assets.

Annex I model does not mandate the maintenance of UCITS-eligible assets at all times. This allows IFMs more flexibility to maintain lower levels of such assets outside the relevant redemption days.

Alternatively, with Annex II model, IFMs will be required to maintain a minimum percentage of UCITS-eligible assets outside the redemption days. Where such assets fall below the relevant threshold, IFMs will be required to reconstitute the minimum percentage of UCITS-eligible assets.

In any case, if IFMs propose a notice period of less than 3 months, they will have to inform the regulator of their intention and provide reasons for

such shorter notice period, together with how it is consistent with the individual features of the ELTIF.

LMTs

IFMs "may" select and implement, at least, one anti-dilution LMT. Therefore, the clear obligation to do so is removed.

Execution price

To reduce the likelihood of price arbitrage between the NAV of the shares of ELTIFs traded on a secondary market and those matched through the matching of transfer requests, where the execution price is not based on the NAV of the ELTIF, the execution price should be determined outside the valuation dates of the ELTIF.

The matching is to be carried out on a pro rata basis based on the size of each exit order and consider the available assets and features of the ELTIF..

WHAT'S NEXT?

The RTS entered into force on the day following that of their publication, meaning on 26 October 2024.

MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE AND REGULATION (MIFID II / MIFIR)

ESMA launches new consultations under MiFIR Review (RTS 22 and RTS 24)

On 3 October 2024, the European Securities and Markets Authority (ESMA) published two consultations on transaction reporting and order book data under the Markets in Financial Instruments Regulation (MiFIR) Review.

ESMA is seeking input on the amendments to the RTS for the reporting of transactions and to the RTS for the maintenance of data relating to orders in financial instruments. These RTS are relevant to enhance the information available to stakeholders by improving, simplifying and further harmonising data reporting requirements. The implementation of the revised standards should also result in an overall reduction of the reporting burden for market participants that are subject to different reporting regimes.

The consultations are aimed at Market Participants, Trading Venues, and Investment Firms and National Competent Authorities (NCAs). ESMA will consider the feedback received to both consultations by 3 January 2025. After reviewing the feedback received, ESMA will publish a final report and submit the draft technical standards to the European Commission by the end of Q2 2025.

ESMA updates Q&A on MiFID II

On 11 October 2024, the European Securities and Markets Authority (ESMA) updated its Q&A on Markets in Financial Instruments Directive II (MiFID II).

In the gas derivatives market, lot sizes defined in the contract specification by trading venues do not represent a standard quantity of the underlying across all market areas, for the same maturity. How should the open interest in lots be calculated for gas derivatives, for the application of position limits in Article 57(1) of MiFID II?

In most European gas market areas, the unit of trading is MWh/h. However, in some market areas the market trading convention is different. For example, the unit of trading is MWh/day in French PEG and Spanish PVB and Ktherms/day in UK NBP. Those differences are reflected in the unit of trading of associated derivatives contracts and their lot sizes: one lot of PEG or PVB gas derivative contract is 24 times smaller than one lot of the TTF gas derivative contact, for the same maturity. Taking the example of a monthly contract, one lot of TTF represents 720MWh while one lot of PEG and PVB represent 30MWh.

Gas derivatives are traded on EU trading venues and therefore subject to positions limits where the open interest equals or exceeds 300,000 lots over a one-year period, in accordance with Article 57(1) of MiFID II. Due to the differences in unit of trading, the open interest of contracts with smaller lot sizes may exceed the 300,000 lot threshold even though, when converted to MWh, their open interest is much smaller compared to contracts with larger lot sizes. In other words, those contracts may exceed the threshold due to historical market conventions rather than actual liquidity. This goes against the original intention of the position limit regime, which aims to set position limits only on contracts with significant liquidity.

Therefore, it is necessary to ensure a consistent calculation of open interest in gas derivatives contracts to assess the 300,000 lot threshold and set position limits for critical or significant commodity derivatives under Articles 11(1) and 13 of RTS 21a. For such position limit assessment, the

open interest should be calculated "equivalent lot", where one equivalent lot of all gas derivative contracts represent the same quantity of MWh as the benchmark TTF derivative contract for the same maturity.

ESMA updates Guidance under MiFIR Review

On 16 October 2024, the European Securities and Markets Authority (ESMA) updated guidance under the MiFIR Review.

The updated relates to the Q&As on transparency and market structure issues, the Manual on post-trade Transparency and the Opinion on the assessment of pre-trade waivers considering MiFIR Review Transitional Provisions.

List of updated Q&As is as follows:

- Q&As on market structure topics: 1663, 1664, 1667, 1668 (all deleted).
- Q&As on transparency topics: 1552, 1553, 1554 (all amended), 1555 (deleted), 1561 (amended), 1562 (deleted), 1563 (amended), 1564 (deleted), 1567 (amended), 1568, 1569, 1572, 1580, 1583, 1584, 1585 (all deleted), 1588 (amended), 1589 (deleted), 2306 (amended).

ESMA consults on changes in MiFID research regime

On 28 October 2024, the European Securities and Markets Authority (ESMA) published a consultation on amendments to the research provisions in the Markets in Financial Instruments II (MiFID II) Delegated Directive following changes introduced by the Listing Act.

The Listing Act introduces changes that enable joint payments for execution services and research for all issuers, irrespective of the market capitalisation of the issuers covered by the research.

The Consultation Paper includes proposals to amend Article 13 of the MiFID II Delegated Directive in order to align it with the new payment option offered.

In particular, ESMA's proposals aim to ensure that:

- the annual assessment of research quality is based on robust criteria;
- the remuneration methodology for joint payments for execution services and research does not prevent firms from complying with best execution requirements.

The consultation is primarily aimed at research providers, investment firms, and investors.

ESMA will consider the feedback received to this consultation by 28 January 2025 and aims to provide its technical advice to the Commission in Q2 2025.

PAYMENT AND SETTLEMENT SYSTEMS

ESMA announces next steps for transition to T+1

On 15 October 2024, the European Commission, the European Central Bank (ECB), the European Securities and Markets Authority (ESMA) published a joint statement on next steps of shortening the standard securities settlement cycle in the EU.

For most of the last decade, the global standard for settlement of securities was for it to occur on the second business day after the date on which those securities were traded (T+2). However, international capital markets have started to gradually shift to a shorter standard securities settlement cycle, namely T+1. This trend received a significant boost in May 2024 with North America (US Canada and Mexico), moving to T+1 settlement, which prompted further jurisdictions to announce a similar move. ESMA has been mandated to assess the appropriateness of shortening the settlement cycle in the EU, to look at the impacts, the costs and benefits and international developments and to propose a detailed roadmap towards a shorter settlement.

ESMA will deliver its report to the Council and the European Parliament in the coming months, but its preliminary findings are clear. First, shortening the settlement cycle in the EU will change the way in which markets function, with impacts depending on the type of stakeholder, the category of transaction and the type of financial instrument. Second, quantifying some of the costs and benefits related to the shortening of the settlement cycle in the EU is challenging, but the elements assessed by ESMA to date suggest that the impacts of T+1 in terms of risk reduction, margin savings and the reduction of costs linked to the misalignment with other major jurisdictions globally, bring along important benefits for the EU Savings and Investments Union ('SIU'). Third, harmonisation, standardisation and modernisation will be needed and will require investments. The improved efficiency and resilience of post-trade processes that would be prompted by a potential move to T+1 would facilitate achieving the

objective of further promoting settlement efficiency in the EU.

Although settling securities transactions on T+1 in EU Central Securities Depositories (CSDs) is already technically and legally possible, EU market participants have indicated a strong preference for amending the CSDR (Regulation (EU) No 909/2014) to mandate a harmonised shortening of the settlement cycle in the EU. In their view, this would ensure a coordinated and smooth transition to T+1 and provide legal certainty. A decision on this matter needs to be taken by the EU co-legislators following a legislative proposal from the European Commission, should the latter decide to adopt one. TARGET-2-Securities (T2S), the Eurosystem's technical platform to which most of EU CSDs have outsourced settlement, plays a central role in the EU post-trade landscape.

Given the high level of interconnectedness between the EU capital markets and those in other jurisdictions in Europe, a coordinated approach across Europe is desirable, with efforts to reach consensus on the timing of any move to T+1. ESMA, in close coordination with NCAs, DG FISMA and the ECB's DG MIP have therefore agreed to establish a governance structure, incorporating the EU financial industry, as soon as possible to oversee and support the technical preparations of any future move to T+1.

REGULATION ON DIGITAL OPERATIONAL RESILIENCE FOR THE FINANCIAL SECTOR (DORA)

EC adopts Delegated Acts on ICT-related incidents and cyber threats under DORA

On 23 October 2024, the European Commission adopted Delegated Acts on ICT-related incidents and cyber threats under Regulation (EU) 2022/2554 - DORA.

The Delegated Acts are as follows:

- Commission Delegated Regulation supplementing Regulation (EU) 2022/2554 with regard to RTS specifying the content and time limits for the initial notification of, and intermediate and final report on, major ICT-related incidents, and the content of the voluntary notification for significant cyber threats.
  Article 1 sets out the format of the type of information that needs to be provided by financial entities (FEs).
  Article 2 sets out the nature of the general information that needs to be provided by financial entities in the case of the major ICT related incident initial notification, and the intermediate and final reports.
  Article 3 defines the information that needs to be provided by financial entities on the major ICT related incident in their initial notification.
  Article 4 defines the information that needs to be provided by financial entities on the major ICT related incident in their intermediate report.
  Article 5 defines the information that needs to be provided by financial entities about the major ICT related incident in their final report.
  Article 6 establishes the time limits for the submission of the initial notification, the intermediate report and final reports referred to in Article 19(4).
  Article 7 defines the content of the voluntary notification for the significant cyber threats.

- Commission Implementing Regulation laying down ITS with regard to the standard forms, templates, and procedures for financial entities to report a major ICT-related incident and to notify a significant cyber threat.

FEs should complete those data fields of the reporting template that correspond to the information requirements of the respective notification or report. However, FEs that already have information which they are to provide at a later reporting stage, i.e. in the intermediate or final report, should be allowed to anticipate the submission of the data. To ensure accurate and up to-date information, the reporting template should enable FEs, when submitting the intermediate and final report, to update any information that was submitted previously, and where necessary reclassify major incidents as non-major.

European Commission adopts Delegated Regulation on oversight activities under DORA

On 24 October 2024, the European Commission adopted a Commission Delegated Regulation with regards to RTS on the harmonisation of conditions enabling the conduct of the oversight activities under DORA.

The main changes introduced to the draft RTS are related to the scope of the information to be provided by an ICT third-party service provider in the application to be designated as critical, the relevant identification code, the scope and content of the information to be provided by the critical ICT third-party service providers to the Lead Overseer including information about their subcontracting arrangements and the competent authorities' assessment of the risks addressed in the recommendations of the Lead Overseer.

Article 1 sets out the information to be provided by ICT third-party service providers in the application for a voluntary request to be designated

as critical.

Articles 2-5 lay down the content of information to be provided by critical ICT third-party service providers to the Lead Overseer (Article 2), including the information to be provided after the issuance of recommendations (Article 3), the structure and format of the information (Article 4) and the information on subcontracting arrangements that will have to be provided (Article 5).

Article 6 covers the NCAs' assessment of the measures taken by critical ICT third-party service providers based on recommendations of the Lead Overseer.

REGULATION ON MARKETS IN CRYPTO-ASSETS (MICA)

EBA publishes final Guidelines on redemption plans under MiCAR

On 9 October 2024, the European Banking Authority (EBA) published final Guidelines on redemption plans under Markets in Crypto-Assets Regulation (MiCAR).

The Guidelines, which are addressed to NCAs designated under MiCAR, cover issuers of asset-referenced tokens (ARTs) and of e-money tokens (EMTs). The Guidelines specify the content of the redemption plan to be developed by issuers of ARTs and EMTs in going concern, including the liquidation strategies of the reserve of assets, the mapping of critical activities, the content of the redemption claims, the main steps of the redemption process, and the elements that may lead to the trigger of the plan by the competent authority.

Considering the feedback received during the public consultation, a few targeted amendments have been made to streamline the wording and provide further clarity on some specific aspects. For instance, some clarifications allow for flexibility so that the guidance addressed to issuers of ARTs relating to the liquidation of the reserve of assets can be used, to some extent, also by issuers of EMTs.

European Commission adopts various RTS supplementing MiCA

On 31 October 2024, the European Commission adopted the Commission Delegated Regulation supplementing MiCA with regards to various RTS.

- CDR supplementing MiCA with regard to RTS specifying the information to be included in an application for authorisation as a CASP.
  Article 1 provides for the general information to be submitted by the applicant seeking authorisation.
  Article 2 specifies the content of the programme of operations of the applicant seeking authorisation.
  Article 3 provides for the prudential requirements of the applicant seeking authorisation.
  Article 4 specifies the information in relation to governance arrangements and internal control mechanisms.
  Article 5 specifies the content of the business continuity plan.
  Article 6 specifies the information to be submitted regarding the detection and prevention of money laundering and terrorist financing.
  Article 7 specifies the information to be submitted regarding the members of its management body, in particular their identity and proof of good repute, knowledge, skills, experience and of sufficient time commitment in the applicant.
  Article 8 specifies the information to be provided regarding the shareholders or members with qualifying holdings.
  Article 9 specifies the documents to be submitted regarding the applicant's ICT systems and related security arrangements.
  Article 10 provides for the description of the procedures for the segregation of client's crypto-assets and funds.
  Article 11 provides for the information to be submitted regarding the complaints handling procedure of the applicant.
  Article 12 provides for the information to be submitted when intending to provide the service of custody and administration of crypto-assets on behalf of clients.
  Article 13 provides for the information to be submitted when intending to provide the service of operating a trading platform.
  Article 14 provides for the information to be submitted when intending to provide the service of exchange of crypto-assets for funds or other crypto-assets.
  Article 15 provides for the information to be submitted when intending to provide the service of executing orders for crypto-assets on behalf of clients.
  Article 16 provides for the information to be submitted when intending to provide the service of advice on crypto-assets or portfolio management of crypto-assets.
  Article 17 provides for the information to be submitted when intending to provide transfer services for crypto-assets on behalf of clients.
  Article 18 lays down the date of entry into force of the delegated act.
- CDR supplementing MiCA with regard to RTS specifying the procedure for the approval of a crypto-asset white paper.
  In order to ensure the swift and efficient completion of the crypto-asset white paper approval process in the most proportionate way, the

submission of the application for approval of the crypto-asset white paper and other communication or exchange of information between the credit institution and the NCA as well as between the NCA and the ECB or, as applicable, a relevant central bank, should be made via electronic means, which allow easier and faster communication and record-keeping. Given the high expectations of diligence on both public authorities and institutions, a high level of security should be expected to be achieved. Where, in the course of the completeness assessment, a NCA finds that the crypto-asset white paper is missing some of the elements required by Article 19(1), and requests the credit institutions to resubmit the crypto-asset white paper with those additional elements, the credit institution should be able to demonstrate to the NCA how the additional information in the revised white paper addresses that request. It is therefore necessary to provide that each revised version of the crypto-asset white paper submitted to the NCA contains such an explanation, as well as a marked-up file of the crypto-asset white paper that clearly highlights all changes made since the previously submitted version, and a clean file where such changes are not highlighted.

- CDR supplementing MiCA with regard to RTS specifying the methodology to estimate the number and value of transactions associated to uses of asset-referenced tokens and of e-money tokens denominated in a currency that is not an official currency of a Member State as a means of exchange.
  The RTS specify the methodology to be applied by issuers of ARTs and of EMTs denominated in a non-EU currency for estimating the number and value of transactions associated to uses of such tokens 'as a means of exchange', for the purpose of the reporting in Article 22(1)(d). This includes provisions on the scope of the transactions to be reported by issuers, including the geographical scope of such transactions, and on how issuers should estimate the number and value of such transactions.
- CDR supplementing MiCA with regard to RTS specifying the conditions for the establishment and functioning of consultative supervisory colleges.
  The RTS specify the criteria to be used for determining "the most relevant" custodians of the reserve of assets, trading platforms, payment service providers providing payment services in relation to the significant EMTs and crypto-assets service providers providing custody and administration of crypto-assets on behalf of clients, as referred to in Article 119(2)(d), (e), (f) and (h), and the conditions under which it is considered that ARTs and EMTs are "used at large scale" in a Member State, as referred to in Article 119(2)(l), for the purpose of determining the composition of a supervisory college under MiCA. The RTS also specify the general conditions for the functioning of supervisory colleges under MiCA, including aspects related to participation in the college meetings, the voting procedures for the adoption of a non-binding opinion by the college, and aspects related to the exchange of information and the entrustment of tasks among college members.
- CDR supplementing MiCA with regard to RTS on continuity and regularity in the performance of crypto-asset services.
  Article 2 provides for requirements regarding the organisational aspects of the business continuity arrangements to be maintained by CASPs.
  Article 3 lays down the requirements applicable to the business continuity policy to be established by CASPs, including its essential elements.
  Article 4 requires CASPs to establish business continuity plans to implement the business continuity policy and specifies their minimum content.
  Article 5 specifies the requirements for the periodic testing of business continuity plans to be undertaken by CASPs.
  Article 6 requires CASPs to take into account the increased complexity and risk when developing their business continuity policy and, in this context, to carry out a self-assessment of the scope, nature and range of their services.
  Article 7 provides for the date of entry into force of the regulation and its applicability in Member States.
- CDR supplementing MiCA with regard to RTS specifying the information to be included by certain financial entities in the notification of their intention to provide crypto-asset services.
  To avoid outages of operations as they can have major financial, regulatory and reputational consequences for the notifying entity and more generally, crypto-asset markets in general, it is critical to maintain operations or at least essential functions of CASPs and to minimise downtime due to unexpected disruptions, including cyberattacks and natural disasters. A notification should therefore contain detailed information on the notifying entity's arrangements to ensure continuity and regularity in the provision of crypto-asset services, including a detailed description of its risks and business continuity plans. The segregation of clients' crypto-assets and funds protects clients from losses of the CASP and from misuse of their crypto-assets and funds. Article 70 therefore requires CASPs to make adequate arrangements to safeguard the ownership rights of clients. That requirement also applies to CASPs that do not provide custody and administration services.

SUSTAINABLE FINANCE / GREEN FINANCE

ESMA updates implementation timeline on sustainable finance

On 30 October 2024, the European Securities and Markets Authority (ESMA) updated its implementation timeline on sustainable finance.

The implementation timeline covers:

- Sustainable Finance Disclosures Regulation (Regulation (EU) 2019/2088 - SFDR),
- Taxonomy Regulation (Regulation (EU) 2020/852)
- Corporate Sustainability Reporting Directive (Directive 2022/2464 - CSRD),
- Benchmarks Regulation (Regulation (EU) 2016/1011).
- European Green Bonds Regulation (Regulation (EU) 2023/2631).

BELGIUM

CODE OF CONDUCT

FSMA specifies certain terms and conditions of the bank oath

On 21 October 2024, the Financial Services and Markets Authority (FSMA) specified certain terms and conditions of the bank oath.

The banking oath regime is based on several key pillars:

- the drafting of disciplinary rules issued by Royal Decree;
- the taking of a bank oath committing to respect these disciplinary rules;
- the integration of disciplinary action into the FSMA's competences ;
- the establishment of a central register of disciplinary sanctions and professional bans; and
- the requirement to present a certificate of absence of professional prohibition before any recruitment.

This new disciplinary measure of the bank oath will come into force on 15 January 2025 for fit and proper persons and managers responsible for credit institutions and on 15 July 2026 for other banking service providers.

To guide the various players in the sector, the FSMA has updated the FAQs published on its website and provides additional details on:

- the scope of the bank oath;
- the procedures for taking the oath;
- the manner in which the list of banking service providers is to be transmitted to the FSMA; and
- the rules governing the presentation of certificates of absence of professional prohibition.

At the same time, the FSMA has made available to credit institutions a model certificate of swearing in for services that must be provided from 15 January 2025.

DIRECTIVE ON SECURITY OF NETWORK AND INFORMATION SYSTEMS (NIS DIRECTIVE)

The Federal Council of Ministers publishes press release on Belgium becoming the first EU Member State to fully implement NIS2

On 18 October 2024, the Federal Council of Ministers published a press release on Belgium becoming the first EU Member State to fully implement the Network and Information Security Directive (NIS2).

This major step forward will considerably strengthen the level of cyber resilience of a large number of entities active in Belgium. It is estimated that at least 2,500 Belgian organisations will have to register on the atwork.safeonweb.be website and implement the necessary measures.

Every day, vulnerable organizations fall victim to cybercriminals who skillfully exploit visible security vulnerabilities or lack of two-step verification (2FA), perpetrating ransomware attacks and data theft. The new European directive NIS2 aims to improve this worrying situation.

From 18 October 2024, organisations are obliged to report all significant incidents to the Centre for Cyber Security Belgium (CCB) without undue delay and within 24 hours at the latest, then to provide additional notification within 72 hours and finally to write a final report within 30 days.

PAYMENT AND SETTLEMENT SYSTEMS

Belgium publishes Ministerial Decree renewing the recognition of a centralised system for borrowing financial instruments

On 23 October 2024, Belgium published a Ministerial Decree renewing the recognition of a centralised system for borrowing financial instruments taken in implementation of Article 73(5) up to 73(12) of the Royal Decree Implementing Tax Code (RD/ITC 92) laying down the conditions of approval to be met by a centralised system for borrowing financial instruments integrated into a payment and settlement system for securities transactions and the period during which recognition can be granted.

The centralised system for borrowing and borrowing financial instruments, called "GC Access", managed by Euroclear Bank, is recognised as a centralised system for borrowing financial instruments, to the extent that the participants do not make use of contractual clauses that do not allow the conditions referred to in Article 73 to be applied to the RD/ITC 92. This recognition shall be renewed for the period from 1 January 2025 to 31 December 2029. The publication of this Ministerial Decree in the Belgian Official Gazette shall be deemed to constitute notification.

It is up to the operator of the centralised system to inform its participants of:

- the date on which it ceases to make use of this recognition;
- the categories of financial instruments eligible for the centralised system for which the manager uses the accreditation; and
- the clauses of the general terms and conditions which do not meet the conditions referred to in Article 73(6) of the RD/ITC 92.

REGULATION ON DIGITAL OPERATIONAL RESILIENCE FOR THE FINANCIAL SECTOR (DORA)

FSMA launches second awareness survey on the DORA

On 21 October 2024, the Financial Services and Markets Authority (FSMA) launched a second Awareness Survey on the Digital Operational Resilience Act (DORA).

The FSMA is launching a second Awareness Survey on the DORA Regulation. Its purpose is to enable both the FSMA and the relevant entities subject to its supervision to have a more precise view of the degree of implementation of the various DORA obligations and of the way in which this implementation has evolved since the previous investigation.

Complying with these requirements helps each entity to increase its digital resilience so that it is better prepared to deal with ICT risks that will continue to grow in the future. In the absence of adequate and effective risk management, these ICT risks can pose a real threat to the sustainability of the entity.

Compared to the first investigation, the second is much more extensive and provides an almost exhaustive review of all the articles of the regulation that apply to the entities concerned. This allows the FSMA to assess the level of implementation of these provisions, but - more importantly - also provides the entities in question with a practical tool to carry out a gap analysis between the DORA requirements and their current implementation within the entity. This survey can thus serve as a guideline for identifying requirements in terms of ICT risk management, incident management, digital resilience testing and ICT third-party service provider management that still need to be organised, developed and implemented in the final months before the final entry into force of the DORA Regulation.

The FSMA strongly encourages financial entities to respond to this new survey, to the best of their ability and in accordance with their current reality. This will give them a correct picture of the situation, showing which requirements have already been met to comply with the provisions of the DORA Regulation and which still need to be improved.

The obligations introduced by the DORA will apply from 17 January 2025.

SHAREHOLDING / OWNERSHIP STRUCTURES

NBB updates circular to financial institutions concerning the acquisitions, increases, reductions and disposals of qualifying holdings (01/10/2024)

On 1 October 2024, the National Bank of Belgium (NBB) updated its Circular to financial institutions concerning the acquisitions, increases, reductions and disposals of qualifying holdings.

The Circular applies to all natural or legal persons intending to acquire, increase, reduce and dispose of qualifying holdings in financial institutions:

- credit institutions,
- brokerage firms,
- Insurance undertakings,
- reinsurance undertakings,
- payment and electronic money institutions,
- Central securities depositories and support bodies of a central securities depository,
- financial companies,
- investment holding companies,
- insurance holding companies,
- mixed financial companies.

This circular is an update of the Circular NBB_2017_23 relating to the obligations of financial institutions to declare occasionally and periodically to the supervisory authority in relation to qualifying holdings. Its objective is to remind financial institutions of the legal and regulatory requirements applicable to them in terms of the composition of their capital and to inform them of the fact that the forms for reporting to the supervisory authority in this area are now fully digitalised.

The update relates to the addition of two Annexes:

- Capital status and composition: Annual return.
  This declaration must be used by financial institutions governed by Belgian law to send to supervisory authority on an annual basis, in the month following the ordinary general meeting of their shareholders or members, the legally required information concerning the direct and indirect qualifying holdings held in their capital.
- Change in the statement and composition of capital: Occasional reporting.
  This declaration must be used by financial institutions governed by Belgian law to send to supervisory authority, as soon as they become aware of acquisitions or disposals of their securities or units that cause the transferee or transferor to cross the thresholds of 10%, 20%, 30% or 50% of their capital or voting rights.

On the same day, the FSMA also issued a communication on the same matters. This Communication is an update of the NBB_2017_22 Communication of 14 September 2017 which specifies the procedure to be followed by persons intending to acquire, increase, reduce or dispose of a qualifying holding in a financial institution. Its purpose is to update the applicable reference framework and to inform these persons that the NBB has decided to review its notification and declaration forms and to digitise them. This communication is applicable immediately and the new fully digitised forms will be available from 1 October 2024. The digitization in OneGate (scheduled for 1 October 2024) is postponed to the beginning of 2025.

SUSTAINABILITY

Chambre des représentants publishes draft law transposing the CSRD

On 25 October 2024, the Chambre des représentants published a draft law transposing the Corporate Sustainability Reporting Directive (Directive (EU) 2022/2464 - CSRD).

Large companies, large groups and listed companies are required to include and publish sustainability information in the management report, based on European sustainability standards. This is the information necessary to understand the company's impact on sustainability issues (ESG) as well as the information necessary to understand how sustainability issues influence the company's development, performance and situation. Assurance of sustainability information can be carried out by the company's statutory auditor, another auditor or an independent assurance service provider. The Non-Financial Reporting Directive (NFRD) will be replaced in its entirety by the CSRD Directive, which entered into force on 6 January 2023.

The CSRD will, among other things, remedy a number of shortcomings in the NFRD Directive and significantly extend its scope. Its primary aim is to improve the quality and comparability of sustainability information published by companies. This increases awareness and knowledge within companies of their social responsibility. With this information, investors, consumers and other stakeholders are also better able to assess the sustainability performance and impact of companies and to encourage them to conduct business in a socially responsible manner by establishing and implementing a due diligence plan.

Companies listed on a regulated market will also have to prepare and publish sustainability information, regardless of their size. An exception is made for micro-enterprises. Listed small and medium-sized companies can opt for a simplified sustainability reporting model.

In conclusion, all these new features will apply to Belgian companies and groups through the transposition of the CSRD into Belgian law:

- an extension of the scope to all limited liability companies, which are qualified as large companies;
- an extension of the scope to all companies listed on a regulated market, unless they are micro-enterprises;
- a level playing field between European companies and their non-European competitors that are economically active on the EU market, by subjecting the latter to a similar obligation to publish sustainability information;
- the "comply or explain" principle is replaced by a declaration based on double materiality;
- the application of a uniform standard by all European companies falling within the scope;
- a single electronic reporting format (ESEF);
- mandatory assurance of sustainability information in order to guarantee high quality reporting and reduce the risk of greenwashing.

BRAZIL

CYBERSECURITY

ANBIMA issues Cybersecurity Guidelines

On 10 October 2024, the Brazilian Financial and Capital Markets Association (ANBIMA) issued Guidelines for Cybersecurity in Business Continuity Management.

The material was developed to help financial institutions prepare for and respond effectively to cyber incidents, ensuring business continuity and stakeholder confidence. The document covers everything from the creation of a cybersecurity contingency plan to the importance of continuous employee training and cooperation between entities to exchange information on incidents. The handbook also emphasizes the importance of transparent communication during crises, the formation of multidisciplinary committees for crisis management, and the continuous analysis of incidents to improve security policies. The objective is to contribute to the maturation of the cybersecurity capacity of financial institutions, promoting resilience and cyber crisis management capacity.

FINANCIAL SUPERVISION

ANBIMA presents new evaluation model for investment distribution certifications

On 28 October 2024, the Brazilian Financial and Capital Markets Association (ANBIMA) presented a new evaluation model for investment distribution certifications.

ANBIMA announced the new assessment methodology for the investment product distribution certifications exams (CPA, C-Pro R and C-Pro I). Still in 2024, the public will notice the change in methodology in the microcertifications available in the ANBIMA Edu education and qualification application. The contents will bring evaluations at the end of each course, with questions that will encourage students to reflect on the context of their work and use technical skills to solve problems. ANBIMA hopes that certifications will be more than formal recognition of skills, but also instruments of professional appreciation, continuing education and protection of investors.

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

CVM and ANBIMA announce results of Agreement with institutions

On 2 October 2024, the Comissão de Valores Mobiliários (CVM) and the Brazilian Association of Financial and Capital Markets Entities (ANBIMA) announced the results of the agreement between the institutions in the 1st half of 2024.

The agreement between the CVM and ANBIMA to supervise the fund industry resulted in terms of commitment with five institutions between January and June 2024.

These companies distribute investment products or manage funds, and most of the deals are related to problems with suitability (analysis of suitability to the investor's profile), fund classification, asset classification, and definition of fund investment strategies. In addition to the terms of commitments, the letters of recommendation sent to eight institutions were also shared between ANBIMA and CVM. Most are related to the activity of fund classification managers.

The agreement establishes the exchange of information between ANBIMA and the CVM, with the possibility of the agency taking advantage of the monitoring work of the fund industry carried out by the Association. The partnership seeks to optimize the market supervision activity carried out by the entities and avoid overlapping work, seeking greater alignment in performance and synergy of efforts in penalties (terms of commitment, PAIs, lawsuits and judgments).

ANBIMA updates Transparency rules in remuneration of funds and new questionnaires

On 21 October 2024, the Brazilian Financial and Capital Markets Association (ANBIMA) updated the transparency rules in the remuneration of funds and new questionnaires for essential service providers and, specifically, for administrators of FIDCs (Credit Rights Investment Funds).

The new version of the Rules and Procedures of the Code of Administration and Management of Third-Party Resources is updated due to the new interpretations of the CVM in relation to Resolution 175.

The main changes are the following:

If the manager chooses not to inform in the regulation all the fees charged for the provision of services and for the distribution of the fund separately, he can only inform a global fee (sum of all fees received). However, he will need to keep on his website a document detailing the segregation of fees that is easily accessible to the investor. It must meet other minimum requirements defined in the code, such as bringing general information about the class or subclass.

Two mandatory QDDs (Due Diligence Questionnaires) are released to assist service providers in some situations. It should be used to ensure a minimum standard of governance when the parties make partnership agreements. In addition to topics such as internal controls and information security, new topics are added such as exposure to capital risk, liquidity tools, questions about ESG (environmental, social, and governance factors), and investment in crypto assets.

The document seeks to help players understand the risks associated with the provision of the service and ensure a minimum standard among the contracted companies. It has questions about money laundering prevention, technological structure and risk management.

The new rules came into force on 1 November 2024.

ANBIMA publishes proposal for informational transparency of remuneration rates of service providers under CVM Resolution 175

On 22 October 2024, the Brazilian Financial and Capital Markets Association (ANBIMA) published a proposal for informational transparency of the remuneration rates of service providers within the scope of CVM Resolution 175.

Some perceptions regarding the unintended consequences arising from the new dynamics of remuneration of the funds' service providers, as currently provided for in RCVM 175 and related Circular Letters:

- Proliferation of Subclasses: the dynamics of segregation of fees currently provided for in RCVM 175, under which the management fee no longer communicates with the distribution fee, brings distortions in the application of subclasses, which will be used to differentiate commercial agreements between managers and distributors, and not, as originally expected, to differentiate aspects of the same product, such as: different benchmarks, terms and conditions of application and redemption, and/or manager's remuneration.
- Portability Process: another operational impact observed concerns portability between subclasses. Also under the CVM Instruction 555 regime, portability occurs by the mere change in the registration of quotaholders who go through such a process, being the main beneficiaries of the simplicity of the process.
- Complexity for the Investor: given the scenarios 1 and 2 explained above, we understand that the process as currently provided for by RCVM 175 ends up becoming complex and difficult to understand for the investor.

In view of the concerns raised and their adverse consequences, ANBIMA has developed a proposal that will allow them to reconcile the preservation of the essence of transparency required with simplicity, beneficial to investors and market participants. The proposal made consists of making the opening of fees more flexible in the fund's corporate documents (i.e., annex or appendix), opening space for service providers to make such information available in a segregated way through the so-called informational transparency.

ANBIMA proposes extension of deadline for filing appeal for punitive fines

On 22 October 2024, the Brazilian Financial and Capital Markets Association (ANBIMA) proposed an extension of the deadline for filing an appeal for punitive fines from 10 to 20 days due to the high volume of fines received.

Extending this deadline will provide participants with sufficient time to analyze the notifications received and prepare any appeals, which must be individually submitted to the CVM.

CVM Board approves 2nd Amendment in Agreement with B3 and ANBIMA regarding Fundos.Net

On 30 October 2024, the Comissão de Valores Mobiliários (CVM) Board approved the 2nd amendment in agreement with B3 (Brazilian stock exchange) and ANBIMA regarding the Fundos.Net System.

The amendment determines the term of the agreement for five years, in addition to including the Superintendence of Securitization and Agribusiness (SSE) as administrator of the partnership with the Superintendence of Institutional Investor Relations (SIN). A paragraph dedicated to the rules and principles regarding privacy and data protection established in the applicable legislation, especially in the General Data Protection Law (LGPD), was also included.

The agreement aims to develop and maintain the electronic system, the Fundos.Net, for the preparation, delivery and consultation of information related to investment funds that can be listed in a trading environment managed by B3 and the access control module used by this system.

CVM publishes Circular with interpretations of CVM Resolution 175 for FIDC and FII

On 30 October 2024, the Comissão de Valores Mobiliários (CVM) published Circular Letter 6/2024 with interpretations of CVM Resolution 175 for Credit Rights Investment Funds (FIDC) and Real Estate Funds (FII).

The document discloses interpretations of the Agency's technical area regarding issues of doubts by market participants about the application of provisions of Annexes II and III.

The letter presents, in the format of thematic topics, objective and direct notes for better understanding and guidance on the following subjects:

- FII management fee;
- Issuance of new shares of FIIs;
- Hiring of the consultancy and the specialized company by the FII;
- Responsibility for the classification of FIIs;
- Liability of subordinate subclasses of FIDC;
- Prohibition provided for in article 42 of Normative Annex II (FIDC);
- Deadline for registration of credit rights invested by FIDC;
- Registration of the stock of overdue credit rights (FIDC).

INVESTOR PROTECTION / CONSUMER PROTECTION

ANBIMA publishes New Transparency Rules in remuneration to empower investors and help identify conflicts of interest

On 31 October 2024, the Brazilian Financial and Capital Markets Association (ANBIMA) published new rules on transparency in remuneration to empower investors and help identify conflicts of interest.

Changes are part of the adjustments of the Distribution and Trading codes to CVM Resolution 179 and come into force on 1 November 2024.

The objective is to guide institutions to standardize the information they must offer to customers, facilitating their understanding and enabling better comparisons between different distributors and investments.

From now on, institutions will also have to keep in the logged-in part of their websites quantitative and specific information on remuneration related to investment or divestment operations in securities contracted by investors. If the service is in branches or telephone, for example, the report must be made available within three business days.

The new rules also require institutions to provide customers with a consolidated statement of the remuneration received by distributors each quarter. The first document, relating only to the months of November and December, should be sent at the end of January. The following statements will relate to the previous three months and must be made available within 30 days of the end of the quarter. The statement must contain the type of investment made; the total amount and nature of the remuneration; the amount corresponding to investment advisors and the electronic address for access to the full remuneration policy.

When investing in funds, the investor will be informed about the effective rate related to the distribution and the estimate of the variable rates agreed between manager and distributor. Intermediaries must also warn that the remuneration that will appear in the quarterly statement may be different due to this variable portion. Investors who invest abroad with a foreign institution indicated by a Brazilian distributor will also have access to the qualitative description of the remuneration related to this indication. In addition to all securities traded in the primary and secondary markets, investors have access to the remuneration received for the distribution of LIG (Guaranteed Real Estate Bill) and Financial Bill distributed publicly. The intermediation of some massively offered over-the-counter derivatives models is also in scope.

Institutions are also obliged to maintain an internal document, which will be supervised by ANBIMA, with a description of the procedures adopted to verify remuneration.

REMUNERATION

ANBIMA publishes Informational Transparency of Service Provider Remuneration Rates

On 9 October 2024, the Brazilian Financial and Capital Markets Association (ANBIMA) published Informational Transparency of Service Provider Remuneration Rates.

It questions the possibility of maintaining the global rate in regulation and the disclosure of a summary of remuneration separately as an

alternative to the segregation of rates for FIDC, FII and Fiagro. In this document, ANBIMA share their perceptions regarding the unintended consequences arising from the new dynamics of remuneration of the funds' service providers.

Proliferation of subclasses: possibility of using subclasses to differentiate commercial agreements between managers and distributors, and not, as originally expected, to differentiate aspects of the same product, such as: different benchmarks, terms and conditions of application and redemption, and/or manager's remuneration.

Portability process: relevant operational impact given that today portability occurs by the mere change in the registration of quotaholders and, with the new structure of RCVM 175, the process becomes much more complex, resembling, from an operational point of view, a spin-off/merger event, in view of the need for:

- probable change in the number of shares of the investor and
- migration of the history of quotas and tax conditions of the respective shareholder.

Complexity generated for the investor: due to the proliferation of subclasses, the investor could be allocated into several different subclasses depending on the date of the investment depending on the volume distributed. Likewise, it could have its position transferred to another subclass only to accommodate the receipt of new remuneration by the distributor, due to the change in the financial amount defined in the agreement. The decision process also gains nuances of complexity since the investor will have several subclasses with their respective appendices to evaluate, and such subclasses may not be distinguished by specific characteristics such as terms and conditions of application and redemption, for example, but merely to accommodate the various commercial agreements signed between the manager and the distributors of the same product.

Changes in the Distribution Code are the following:

- Now, institutions must maintain, in the logged-in part of their websites and applications, quantitative information on the remuneration received for the sale of securities. If the service is in branches or telephone, the report must be made available within three business days.
- Investors should also have access to a quarterly statement with this information, starting in January 2025, with data for November and December 2024.
- In the case of investment in funds, the investor must be informed about the effective rate and the estimate of the variable distribution rate at the time of contracting. This information must be accompanied by a mandatory notice that, due to the existing commercial agreements between the distributor and the fund manager, this estimate may change and be different from that disclosed in the quarterly statement.
- Remuneration on intermediation services abroad must also be disclosed to investors in the Remuneration Policy.

Changes in the Trading Code are the following:

- As of November 1st, it will be mandatory for the institution to keep an internal document with the description of the procedures adopted to verify the remuneration received for the distribution of some products. The list includes: LIG (Guaranteed Real Estate Bill) and publicly distributed financial bill and COE (Certificate of Structured Operations). Some models of over-the-counter derivatives and other securities traded in the secondary market are also included in the rule.
- To standardize the way institutions will carry out these procedures, the methods and minimum requirements that will be accepted for each product were also defined. The calculation must consider, for example, the market price of that asset.

Changes in self-regulation are the following:

- These changes are part of ANBIMA's Market Development agenda in Action, a set of activities that we have chosen as priorities for the 2023/24 biennium

SUSTAINABLE FINANCE / GREEN FINANCE

CVM releases Volume 2 of Sustainable Finance Series

On 9 October 2024, the Comissão de Valores Mobiliários (CVM) released the Volume 2 of the Sustainable Finance Series.

Sustainable Finance Series is part of the Sustainable CVM Booklet and is themed Relationship between Investments, Environment and Impact. In the new edition, the importance of integrating environmental and social aspects into investment decisions is presented, with an approach to regulatory advances and public policies in the area of sustainable finance, reinforcing the growth trend of this market. In addition, new aspects related to the Sustainable Taxonomy and the Materiality Matrix were introduced in sustainability reports, presenting the concepts of single and double materiality, essential for the proper preparation of these reports, including explanations regarding the standard adopted by the CVM, the International Sustainability Standards Board (ISSB). The publications of the Sustainable CVM series seek to equip investors with knowledge, data

and tools so that they develop critical thinking and the ability to make thoughtful and informed investment decisions. The objective is to mitigate the risks of greenwashing and, thus, preventively assist in the supervision activities of the Authority.

CVM publishes Circular Letter No. 6 with new Guidelines on Resolution 175

On 15 October 2024, the Comissão de Valores Mobiliários (CVM) published the Circular Letter No. 6 with new guidelines on Resolution 175.

The Guidelines deal with items related to the summary of remuneration, taxonomy of the subclass code and classes of ESG funds.

Among the clarifications brought by the regulator is the need for managers to observe our self-regulation on transparency in the remuneration rates of the funds. These rules were in public hearing until 10/4 and will be released soon to the market.

Another issue that was clarified is the possibility of fund classes keeping terms such as "green" in their names, for example, as long as they have no correlation with sustainable finance and their materials do not give investors an understanding of any ESG aspect.

COLOMBIA

CAPITAL MARKETS UNION (CMU)

URF publishes Decree 1239 in relation to different instruments that contribute to the liquidity of securities market

On 3 October 2024, the Unidad de Proyección Normativa y Estudios de Regulación Financiera (URF) published the Decree 1239 by which Decree 2555 of 2010 is modified in relation to the different instruments that contribute to the liquidity of the securities market and the Technical document of Decree 1239.

The proposal covers a series of issues related to the expansion and deepening of liquidity training programs, operational improvements in temporary transfer of securities and short sales operations, promotion of securities financing by brokerage firms, modification of the tool for the treatment of conflicts of interest in transactions with related parties, promotion of the issuance of bonds by credit institutions, efficiencies for advisory activity, among others, aiming to strengthen the capital market.

PAYMENT SYSTEMS

Ministerio de Hacienda y Crédito Público informs that Draft Decree is published in relation to low-value payment ecosystems

On 4 October 2024, the Ministerio de Hacienda y Crédito Público informed the public that the Decree 2555 of 2010 is modified in relation to low-value payment ecosystems.

Key updates of the new draft Decree include:

- Detailed reporting requirements for entities participating in bilateral compensation and settlement schemes without an intermediary for low-value payment systems.
- Emphasis on governance structures, both rigid and flexible, to oversee payment ecosystems.
- The importance of monitoring and managing risks, especially those arising from dependency on external infrastructure providers.
- Legal reviews and conceptual overviews addressing the potential impact on market competition and compliance with administrative procedures.
- Provisions related to systemic risks and procedural steps involved in the administrative liquidation of financial entities, focusing on preserving stakeholders' interests and systemic resilience.

FRANCE

CONSUMER PROTECTION

AMF publishes Recommendation governing distribution of actively managed certificates to retail clients / L'AMF publie une Recommandation encadrant la distribution de certificats en gestion active à des particuliers

On 28 October 2024, the Autorité des marchés financiers (AMF) published a recommendation for investment services providers and financial investment advisors governing the distribution of actively managed certificates (AMCs) to retail clients.

AMCs are structured debt securities (or equivalent financial securities issued on the basis of foreign rights) whose performance depends on an underlying (basket or index) the composition of which can be modified ('rebalanced') in a discretionary manner during the life of the financial instrument, without it being necessary to obtain the agreement of the end investors. They are not subject to all the protection mechanisms from which collective investment schemes benefit (presence of and control by a depositary, risk division rules, etc.). The distribution of AMCs to retail clients has increased in recent years in the context of transactions exempt from the obligation to publish a prospectus.

Recommendation DOC-2024-06 published by the AMF first draws the attention of investment services providers and financial investment advisors to certain regulatory requirements applicable to the distribution of AMCs (notably with regard to product governance, the information provided to clients – including about costs and charges –, verification of their level of knowledge and experience, and the applicability of AMF Position DOC-2010-05). In addition, the AMF uses this document to issue recommendations designed to better protect investors. These cover, in particular: establishing target markets for product governance, the methodology for estimating 'rebalancing costs', providing information to clients regularly and the recommended authorisations for the persons who determine the composition of the underlying.

This recommendation came into effect upon publication, meaning on 28 October 2024.

Version française

Le 28 octobre 2024, l'Autorité des marchés financiers (AMF) a publié une recommandation à destination des prestataires de services d'investissement et des conseillers en investissements financiers encadrant la distribution de certificats en gestion active (AMC) auprès d'une clientèle de détail.

Les AMC sont des titres de créance structurés (ou titres financiers équivalents émis sur la base de droits étrangers) dont la performance dépend d'un sous-jacent (panier ou indice) dont la composition peut être modifiée (« rééquilibrée ») de manière discrétionnaire pendant la durée de vie du instrument financier, sans qu'il soit nécessaire d'obtenir l'accord des investisseurs finaux. Ils ne sont pas soumis à tous les mécanismes de protection dont bénéficient les organismes de placement collectif (présence et contrôle par un dépositaire, règles de répartition des risques, etc.). La distribution d'AMC auprès de la clientèle de détail s'est développée ces dernières années dans le cadre d'opérations dispensées de l'obligation de publication d'un prospectus.

La recommandation DOC-2024-06 publiée par l'AMF attire tout d'abord l'attention des prestataires de services d'investissement et des conseillers en investissements financiers sur certaines exigences réglementaires applicables à la distribution des SGP (notamment en matière de gouvernance des produits, d'information des clients – notamment sur les coûts et -, vérification de leur niveau de connaissances et d'expérience et de l'applicabilité de la position AMF DOC-2010-05). Par ailleurs, l'AMF utilise ce document pour émettre des recommandations destinées à mieux protéger les investisseurs. Ceux-ci couvrent notamment : l'établissement des marchés cibles pour la gouvernance des produits, la méthodologie d'estimation des « coûts de rééquilibrage », l'information régulière des clients et les autorisations recommandées aux personnes qui déterminent la composition du sous-jacent.

Cette recommandation est entrée en vigueur dès sa publication, soit le 28 octobre 2024.

CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

France publishes Ordinance No. 2024-936 on crypto-asset markets / La France publie l'ordonnance n° 2024-936 relative aux marchés des crypto-actifs

On 17 October 2024, France published the Ordinance No. 2024-936 of 15 October 2024 on crypto-asset markets.

The ordinance aims to align French law with the EU Regulation (EU) 2023/1114 (MiCA) concerning crypto-assets, which establishes a harmonized regulatory framework for crypto-assets to protect European citizens from associated risks. This framework applies to both crypto-asset issuers, including stablecoins, and service providers who must be authorized in the EU to operate.

To prepare for the implementation of MiCA, the French government is authorized to adapt existing laws to ensure compliance and coherence with MiCA, defining the roles of the AMF and the ACPR in regulating and supervising these entities. The ordinance adjusts the regime for digital

asset service providers (PSAN), which will phase out by 1 July 2026, and updates regulations on marketing, advertising, and commercial influence related to crypto-assets.

Additionally, several codes (e.g., customs code, tax code, criminal procedure code) are revised for terminology alignment with MiCA. A new section in the monetary and financial code clarifies the legal status and ownership transfer rules for digital assets. It also sets out AMF and ACPR's competencies related to market abuse surveillance involving crypto-assets and limits banks' ability to refuse account services to PSANs and token issuers, providing a two-month notice for account termination.

The ordinance takes effect on 30 December 2024, except for provisions related to electronic money tokens and asset-referenced tokens, which take effect the day after publication. The PSAN regime will end on 1 July 2026, after a transitional period for already authorized PSANs.

Version française

Le 17 octobre 2024, la France a publié l'ordonnance n° 2024-936 du 15 octobre 2024 relative aux marchés des cryptoactifs.

L'ordonnance vise à aligner la loi française sur le Règlement (UE) 2023/1114 (MiCA) concernant les crypto-actifs, qui établit un cadre réglementaire harmonisé pour les crypto-actifs afin de protéger les citoyens européens des risques associés. Ce cadre s'applique à la fois aux émetteurs de crypto-actifs, y compris les stablecoins, et aux prestataires de services qui doivent être agréés dans l'UE pour opérer.

Pour préparer la mise en œuvre de la MiCA, le gouvernement français est autorisé à adapter les lois existantes pour assurer leur conformité et leur cohérence avec la MiCA, en définissant les rôles de l'AMF et de l'ACPR dans la régulation et la surveillance de ces entités. L'ordonnance ajuste le régime des prestataires de services sur actifs numériques (PSAN), qui sera progressivement supprimé d'ici le 1er juillet 2026, et met à jour les réglementations en matière de marketing, de publicité et d'influence commerciale liées aux crypto-actifs.

De plus, plusieurs codes (par exemple, le code des douanes, le code des impôts, le code de procédure pénale) sont révisés pour un alignement terminologique avec MiCA. Un nouveau chapitre du code monétaire et financier précise le statut juridique et les règles de transfert de propriété des actifs numériques. Il précise également les compétences de l'AMF et de l'ACPR en matière de surveillance des abus de marché sur crypto-actifs et limite la capacité des banques à refuser l'ouverture de comptes aux PSAN et aux émetteurs de tokens, en prévoyant un préavis de deux mois pour la clôture du compte.

L'ordonnance entre en vigueur le 30 décembre 2024, à l'exception des dispositions relatives aux jetons de monnaie électronique et aux jetons référencés sur des actifs, qui entrent en vigueur le lendemain de sa publication. Le régime des PSAN prendra fin le 1er juillet 2026, après une période transitoire pour les PSAN déjà autorisés.

France publishes Ordinance No. 2024-937 on strengthening AML/CFT obligations for transfer of crypto-assets / La France publie l'ordonnance n° 2024-937 renforçant les obligations LBC/FT en matière de transfert de crypto-actifs

On 17 October 2024, France published the Ordinance No. 2024-937 of 15 October 2024 on the strengthening of the AML/CFT obligations with regard to the transfer of crypto-assets.

This ordinance ensures the transposition into French law of amendments to Directive (EU) 2015/849 on preventing the use of the financial system for money laundering or terrorist financing (4th Anti-Money Laundering Directive) by Regulation (EU) 2023/1113 on information accompanying fund transfers and certain crypto-assets (Transfer of Funds Regulation or TFR).

Key Provisions:

- Article 2 adjusts terminology for digital asset service providers in line with MiCA and subjects crypto-asset advisors to AML/CTF regulations, including special provisions for the Caisse des Dépôts et Consignations.
- Article 3 extends the provisions for appointing a permanent representative to payment service providers and electronic money issuers established in another EU member state but offering services in France via agents or distributors.
- Article 4 extends third-party introduction rules to crypto-asset service providers as specified in the monetary and financial code.
- Article 5 requires crypto-asset service providers offering correspondent services to non-EU financial institutions to implement additional vigilance measures.
- Article 6 introduces enhanced vigilance measures for crypto-asset service providers handling transfers to or from self-hosted addresses.
- Articles 8 and 9 maintain the division of AML/CTF supervisory responsibilities between ACPR and AMF for crypto-asset service providers during the transition period until 1 July 2026. This covers both those obtaining new MiCA-compliant authorizations and those registered or authorized in France prior to MiCA's application.
- Article 10 addresses adaptations for overseas territories.

The Ordinance's provisions will come into effect on 30 December 2024, which is the deadline for transposing the amended 4th Anti-Money Laundering Directive by the TFR Regulation.

Version française

Le 17 octobre 2024, la France a publié l'ordonnance n° 2024-937 du 15 octobre 2024 relative au renforcement des obligations LBC/FT en matière de transfert de crypto-actifs.

Cette ordonnance assure la transposition en droit français des modifications de la directive (UE) 2015/849 relative à la prévention de l'utilisation du système financier à des fins de blanchiment de capitaux ou de financement du terrorisme (4e directive anti-blanchiment) par le règlement (UE) 2023/1113 relatif à l'information. accompagnant les transferts de fonds et certains crypto-actifs (Transfer of Funds Règlement ou TFR).

Dispositions clés :

- *L'article 2 adapte la terminologie des prestataires de services sur actifs numériques à celle du MiCA et soumet les conseillers en crypto-actifs à la réglementation LBC/FT, y compris des dispositions particulières pour la Caisse des Dépôts et Consignations.*
- *L'article 3 étend les dispositions de désignation d'un représentant permanent aux prestataires de services de paiement et émetteurs de monnaie électronique établis dans un autre Etat membre de l'UE mais proposant des services en France par l'intermédiaire d'agents ou de distributeurs.*
- *L'article 4 étend les règles d'introduction des tiers aux prestataires de services sur crypto-actifs telles que précisées dans le code monétaire et financier.*
- *L'article 5 impose aux prestataires de services sur crypto-actifs proposant des services de correspondants à des institutions financières de pays tiers de mettre en œuvre des mesures de vigilance supplémentaires.*
- *L'article 6 introduit des mesures de vigilance renforcées pour les prestataires de services sur crypto-actifs gérant les transferts vers ou depuis des adresses auto-hébergées.*
- *Les articles 8 et 9 maintiennent la répartition des responsabilités de surveillance LBC/FT entre l'ACPR et l'AMF pour les prestataires de services sur crypto-actifs pendant la période de transition jusqu'au 1er juillet 2026. Cela couvre aussi bien ceux obtenant de nouveaux agréments conformes à la MiCA que ceux enregistrés ou agréés en France. avant la candidature de MiCA.*
- *L'article 10 traite des adaptations pour les territoires d'outre-mer.*

Les dispositions de l'ordonnance entreront en vigueur le 30 décembre 2024, date limite pour transposer la 4e directive anti-blanchiment modifiée par le règlement TFR.

CUSTODIANS / DEPOSITARIES

FPM publishes press release on supervisory measures implemented by depositaries concerning extra-financial ratios / FPM publie un communiqué sur les mesures de surveillance mises en place par les dépositaires concernant les ratios extra-financiers

On 7 October 2024, the France Post Marché (FPM) published a press release on the supervisory measures implemented by depositaries concerning extra-financial ratios in compliance with the expectations of the AMF.

Key points include:

- The measures will be gradually activated starting from the end of September 2024.
- Depositaires will ensure that asset management companies have a persistent monitoring mechanism for extra-financial constraints. Regular reporting of any ratio exceedances is mandated:
  1. Quarterly for general-purpose funds.
  2. At least annually for other categories, such as funds invested in non-listed securities and real assets.
- The control protocol includes:
  1. Regular submission of monitoring results by asset management firms.
  2. Sampling checks of calculation results at least annually.
  3. Independent ratio calculations when data are accessible to Depositaires.
- Existing reporting formats to the AMF are to be used, with enhancements to include all relevant data and any passive exceedances.
- There is ongoing dialogue between various professional associations to create a unified nomenclature for extra-financial rules, which will facilitate better communication and compliance.

The measures aim to provide reasonable assurance that all controls on extra-financial ratios are conducted thoroughly and systematically, following AMF recommendations.

Version française

Le 7 octobre 2024, le France Post Marché (FPM) a publié un communiqué sur les mesures de surveillance mises en place par les dépositaires concernant les ratios extra-financiers conformes aux attentes de l'AMF.

Les points clés comprennent :

- *Les mesures seront progressivement activées à partir de fin septembre 2024.*
- *Les dépositaires veilleront à ce que les sociétés de gestion disposent d'un mécanisme de surveillance permanent des contraintes extra-financières. Un reporting régulier de tout dépassement de ratio est obligatoire :*
  1. *Trimestriel pour les fonds à usage général.*
  2. *Au moins une fois par an pour les autres catégories, telles que les fonds investis en titres non cotés et en actifs réels.*
- *Le protocole de contrôle comprend :*
  1. *Remise régulière des résultats du suivi par les sociétés de gestion.*
  2. *Contrôles par échantillonnage des résultats de calcul au moins une fois par an.*
  3. *Calculs de ratios indépendants lorsque les données sont accessibles aux dépositaires.*
- *Les formats de déclaration existants à l'AMF doivent être utilisés, avec des améliorations pour inclure toutes les données pertinentes et tout dépassement passif.*
- *Un dialogue est en cours entre diverses associations professionnelles pour créer une nomenclature unifiée des règles extra-financières, ce qui facilitera une meilleure communication et un meilleur respect.*

Ces mesures visent à fournir une assurance raisonnable que tous les contrôles sur les ratios extra-financiers sont effectués de manière approfondie et systématique, conformément aux recommandations de l'AMF.

CYBERSECURITY

Government presents Bill on resilience of critical infrastructures and strengthening of cybersecurity / Le gouvernement présente un projet de loi sur la résilience des infrastructures critiques et le renforcement de la cybersécurité

On 15 October 2024, the Government presented a Bill on the resilience of critical infrastructures and the strengthening of cybersecurity.

With this bill, France transposes three European directives aimed at strengthening national mechanisms for securing activities of vital importance and combating cyber threats:

- Directive (EU) 2022/2557 (REC Directive) on the resilience of critical entities which aims to improve the provision in the European internal market of services essential for the maintenance of vital societal functions or economic activities. It strengthens the resilience of infrastructure considered critical by Member States, in a range of sectors (including energy, transport, banking, health, water, food, digital infrastructure, public administration and space);
- Directive (EU) 2022/2555 (NIS2 Directive) which aims to ensure a common level of cybersecurity across the European Union for certain entities classified as essential or important, due to the services they provide and their size. It thus extends the NIS1 Directive by extending it to new entities;
- Directive (EU) 2022/2556 accompanying DORA, which aims to improve the requirements related to the supervision of risks arising from the use of ICT in the financial sector. In particular, it harmonises the framework for the prevention, detection and reporting of incidents, applicable to all financial entities, and creates common rules governing the use of ICT service providers by financial entities.

Version française

Le 15 octobre 2024, le Gouvernement a présenté un projet de loi portant sur la résilience des infrastructures critiques et le renforcement de la cybersécurité.

Avec ce projet de loi, la France transpose trois directives européennes visant à renforcer les dispositifs nationaux de sécurisation des activités d'importance vitale et de lutte contre les cybermenaces :

- *Directive (UE) 2022/2557 (Directive REC) sur la résilience des entités critiques qui vise à améliorer la fourniture dans le marché intérieur européen des services essentiels au maintien des fonctions sociétales vitales ou des activités économiques. Il renforce la résilience des infrastructures*

considérées comme critiques par les États membres, dans une série de secteurs (notamment l'énergie, les transports, la banque, la santé, l'eau, l'alimentation, les infrastructures numériques, l'administration publique et l'espace) ;

- *La Directive (UE) 2022/2555 (Directive NIS2) qui vise à assurer un niveau commun de cybersécurité dans l'ensemble de l'Union européenne pour certaines entités classées comme essentielles ou importantes, en raison des services qu'elles fournissent et de leur taille. Elle étend ainsi la directive NIS1 en l'étendant à de nouvelles entités ;*
- *La Directive (UE) 2022/2556 accompagnant DORA, qui vise à améliorer les exigences liées à la surveillance des risques découlant de l'utilisation des TIC dans le secteur financier. Elle harmonise notamment le cadre de prévention, de détection et de déclaration des incidents, applicable à toutes les entités financières, et crée des règles communes régissant le recours aux prestataires de services TIC par les entités financières.*

EUROPEAN LONG-TERM INVESTMENT FUNDS (ELTIF)

AFG publishes ELTIF 2.0 practical guide / L'AFG publie un guide pratique sur ELTIF 2.0

On 2 October 2024, the Association Française de Gestion (AFG) published their European Long-Term Investment Fund (ELTIF) 2.0 practical guide.

The key points include:

- The ELTIF 2 regulation was published in the EU Official Journal on 20 March 2023, and came into force on 10 January 2024. References are made to RTS, including a delegated regulation by the Commission dated 19 July 2024, which addresses specific technical standards.
- The guide highlights the relaxation in the criteria for eligible assets and portfolio companies, allowing asset managers greater flexibility in their investment choices.
- Changes to distribution and marketing rules are detailed, particularly concerning professional and retail investors. This includes modifications to the preparation and content of the ELTIF prospectus and the specific cases of feeder ELTIFs.
- New provisions on liquidity management are outlined, including the removal of the option for investors to demand liquidation of the ELTIF under certain conditions and the requirements for a minimum holding period for investors.
- The guide emphasizes enhanced transparency and reporting requirements, including the necessity to update the overall cost ratio of the ELTIF annually.
- It provides a chronological timeline of significant dates related to ELTIF 1 and ELTIF 2, including initial proposals, adoptions, and implementations.
- It underlines that while the guide represents the understanding of the law as of 30 August 2024, periodic updates will be provided by the AFG. However, readers are advised to verify any subsequent legislative changes or administrative interpretations.

Version française

Le 2 octobre 2024, l'Association Française de Gestion (AFG) a publié son guide pratique des Fonds Européens d'Investissement à Long Terme (ELTIF) 2.0.

Les points clés comprennent :

- *Le règlement ELTIF 2 a été publié au Journal officiel de l'UE le 20 mars 2023 et est entré en vigueur le 10 janvier 2024. Des références sont faites au RTS, notamment à un règlement délégué de la Commission du 19 juillet 2024, qui aborde des normes techniques spécifiques.*
- *Le guide met en avant l'assouplissement des critères d'éligibilité des actifs et des sociétés en portefeuille, permettant aux gestionnaires d'actifs une plus grande flexibilité dans leurs choix d'investissement.*
- *Les évolutions des règles de distribution et de commercialisation sont détaillées, notamment concernant les investisseurs professionnels et particuliers. Cela inclut des modifications dans la préparation et le contenu du prospectus ELTIF et les cas spécifiques des ELTIF nourriciers.*
- *De nouvelles dispositions sur la gestion de la liquidité sont présentées, notamment la suppression de la possibilité pour les investisseurs d'exiger la liquidation de l'ELTIF sous certaines conditions et l'exigence d'une période de détention minimale pour les investisseurs.*
- *Le guide met l'accent sur le renforcement des exigences en matière de transparence et de reporting, y compris la nécessité de mettre à jour chaque année le ratio de coût global de l'ELTIF.*
- *Il fournit une chronologie des dates importantes liées à l'ELTIF 1 et à l'ELTIF 2, y compris les propositions initiales, les adoptions et les mises en œuvre.*
- *Il souligne que si le guide représente la compréhension de la loi au 30 août 2024, des mises à jour périodiques seront assurées par l'AFG. Il est toutefois conseillé aux lecteurs de vérifier toute modification législative ou interprétation administrative ultérieure.*

FINANCIAL REPORTING

AMF publishes summary of SPOT controls on production, control and transmission of regulatory reports / L'AMF publie la synthèse des

contrôles SPOT portant sur la production, le contrôle et la transmission des rapports réglementaires

On 10 October 2024, the Autorité des marchés financiers (AMF) published a new series of SPOT checks (Supervision of Operational and Thematic Practices) focusing on the processes of production, control, and transmission of reports as required by the AIFMD and the MMFR.

This campaign aligns with AMF's supervisory priorities for 2023 and follows two previous SPOT checks on the same theme, conducted in 2020 and 2023. The first concerned AIFM reporting by portfolio management companies, while the second focused on governance, the production process of various reports, and information declared through ROSA.

The SPOT checks involved five management companies with assets ranging from 1 to 150 billion euros over the period from 1 January 2021 to 31 December 2023. The AMF examined their organizational and governance structures, procedural corpus, operational production, validation, control of data submissions via AIFM reports, money market funds reporting, and ROSA. Internal controls were also reviewed.

Results showed fragmentation in the reporting production chain, indicating significant operational risk, though no intentional errors or omissions were found. Furthermore, companies conduct post-production reviews with external actors involved in the reporting processes. Some companies in the panel failed to include data source origins, control methods, and risk indicator calculation rules in their procedural documentation. A notable improvement was found in the quality of data in the ROSA extranet section tested, decreasing the error rate to 11% from 23% in previous checks. The AMF plans to support these findings with upcoming educational actions.

Version française

Le 10 octobre 2024, l'Autorité des marchés financiers (AMF) a publié une nouvelle série de contrôles SPOT (Supervision des Pratiques Opérationnelles et Thématiques) portant sur les processus de production, de contrôle et de transmission des déclarations exigés par la directive AIFMD et le MMFR.

Cette campagne s'inscrit dans les priorités de surveillance de l'AMF pour 2023 et fait suite à deux précédents contrôles SPOT sur la même thématique, réalisés en 2020 et 2023. Le premier concernait le reporting AIFM des sociétés de gestion de portefeuille, tandis que le second portait sur la gouvernance, le processus de production des différents rapports, et les informations déclarées via ROSA.

Les contrôles SPOT ont porté sur cinq sociétés de gestion dont les actifs s'échelonnent de 1 à 150 milliards d'euros sur la période du 1er janvier 2021 au 31 décembre 2023. L'AMF a examiné leurs structures d'organisation et de gouvernance, leur corpus procédural, leur production opérationnelle, leur validation, leur contrôle des transmissions via Rapports AIFM, reporting sur les fonds du marché monétaire et ROSA. Les contrôles internes ont également été revus.

Les résultats ont montré une fragmentation dans la chaîne de production de reporting, indiquant un risque opérationnel important, même si aucune erreur ou omission intentionnelle n'a été trouvée. De plus, les entreprises effectuent des revues post-production avec des acteurs externes impliqués dans les processus de reporting. Certaines entreprises du panel n'ont pas inclus l'origine des sources de données, les méthodes de contrôle et les règles de calcul des indicateurs de risque dans leur documentation procédurale. Une amélioration notable a été constatée dans la qualité des données dans la section extranet ROSA testée, réduisant le taux d'erreur à 11 %, contre 23 % lors des contrôles précédents. L'AMF prévoit d'appuyer ces constats par des actions pédagogiques à venir.

FINANCIAL SUPERVISION

AMF updates Guide for portfolio management companies and self-managed funds / L'AMF met à jour le Guide des sociétés de gestion de portefeuille et des fonds autogérés

On 8 October 2024, the Autorité des marchés financiers (AMF) updated its Guide for portfolio management companies and self-managed collective investments to reflect recent legislative and regulatory changes and to revise its expectations regarding company capital.

As of 24 October 2024, the "Industrie Verte" law regulates arbitrage mandates in insurance contracts. Management companies must be registered with ORIAS to perform this activity. The AMF removed the requirement for companies to apply portfolio management rules to these mandates for new or renewed contracts after this date.

Companies must keep a formal document tracking their capital adequacy over time. They must inform the AMF promptly of any non-compliance with capital requirements.

Deductible expenses are expanded to include commissions for delegated portfolio management and investment advisory services.

In companies structured as corporations with a board of directors, the General Manager must be a key executive.

The RTO service definition is updated to remove the condition requiring the order recipient to be an investment services provider.

Version française

Le 8 octobre 2024, l'Autorité des marchés financiers (AMF) a mis à jour son Guide des sociétés de gestion de portefeuille et des placements collectifs autogérés pour tenir compte des récentes évolutions législatives et réglementaires et réviser ses attentes en matière de capital des entreprises.

Depuis le 24 octobre 2024, la loi « Industrie Verte » encadre les mandats d'arbitrage en matière de contrats d'assurance. Les sociétés de gestion doivent être immatriculées à l'ORIAS pour exercer cette activité. L'AMF a supprimé l'obligation pour les sociétés d'appliquer des règles de gestion de portefeuille à ces mandats pour les contrats nouveaux ou renouvelés après cette date.

Les entreprises doivent conserver un document formel permettant de suivre l'adéquation de leur capital au fil du temps. Ils doivent informer l'AMF dans les meilleurs délais de tout non-respect des exigences de fonds propres.

Les dépenses déductibles sont élargies pour inclure les commissions pour la gestion déléguée de portefeuille et les services de conseil en investissement.

Dans les entreprises structurées en sociétés par actions avec conseil d'administration, le directeur général doit être un dirigeant clé.

La définition du service RTO est mise à jour pour supprimer la condition exigeant que le destinataire de l'ordre soit un prestataire de services d'investissement.

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

AMF publishes Guide to relations with statutory auditors of asset management companies and funds / L'AMF publie le Guide des relations avec les commissaires aux comptes des sociétés de gestion de portefeuille et des fonds

On 4 October 2024, the Autorité des marchés financiers (AMF) published a guide to relations between the AMF and the statutory auditors (commissaires aux comptes) of asset management companies and collective investment undertakings.

Auditors must report any significant inaccuracies and violations of legislative or regulatory provisions that could impact the financial standing of organizations they audit. These reports must be made in a timely manner upon discovering such issues and discussing them with the organization's management. Reports are typically submitted to a dedicated AMF email address (CAC.DGA@amf-france.org), but auditors have the flexibility to use other traceable methods if they prefer. Situations requiring notification to the AMF include anything affecting business continuity, significant financial issues, or certification challenges. Auditors are generally exempt from professional secrecy in their reports to the AMF, allowing them to disclose necessary information. The AMF provides a standardized reporting template, encouraging auditors to use the specific format detailed in the guide. Auditors should keep the AMF informed regularly, especially if their audit opinion includes reservations, refusals, or issues certifying the accounts.

These guidelines ensure that auditors maintain transparent and timely communications with the AMF, thereby supporting regulatory oversight and financial market integrity.

Version française

Le 4 octobre 2024, l'Autorité des marchés financiers (AMF) a publié un guide des relations entre l'AMF et les commissaires aux comptes des sociétés de gestion de portefeuille et des organismes de placement collectif.

Les auditeurs doivent signaler toute inexactitude significative et toute violation des dispositions législatives ou réglementaires susceptibles d'avoir un impact sur la situation financière des organisations qu'ils auditent. Ces rapports doivent être établis en temps opportun dès la découverte de tels problèmes et leur discussion avec la direction de l'organisation. Les rapports sont généralement soumis à une adresse e-mail dédiée à l'AMF (CAC.DGA@amf-france.org), mais les auditeurs ont la possibilité d'utiliser d'autres méthodes de traçabilité s'ils le souhaitent. Les situations nécessitant une notification à l'AMF comprennent tout ce qui touche à la continuité des activités, les problèmes financiers importants ou les défis de certification. Les commissaires aux comptes sont généralement dispensés du secret professionnel dans leurs rapports à l'AMF, ce qui leur permet de divulguer les informations nécessaires. L'AMF propose un modèle de reporting standardisé, incitant les auditeurs à utiliser le format spécifique détaillé dans le guide. Les commissaires aux comptes doivent informer régulièrement l'AMF, notamment si leur opinion comporte des réserves, des refus ou des problèmes de certification des comptes.

Ces lignes directrices garantissent que les auditeurs maintiennent des communications transparentes et opportunes avec l'AMF, soutenant ainsi la surveillance réglementaire et l'intégrité des marchés financiers.

Government presents Bill ratifying Ordinance on modernisation of alternative investment fund regime / Le gouvernement présente le projet de loi ratifiant l'ordonnance portant modernisation du régime des fonds d'investissement alternatifs

The Minister of the Economy, Finance and Industry presented a Bill ratifying Ordinance No. 2024-662 of 3 July 2024 on the modernisation of the alternative investment fund regime.

It introduces numerous measures to modernise and simplify the AIF regime in order to make French asset management law more attractive and competitive, to make the most of the entry into force of Regulation (EU) 2023/606 (ELTIF 2.0) on 10 January 2024 and thus increase the long-term financing of the European economy, necessary in particular to finance the transition to carbon neutrality.

The Ordinance amends several provisions of the Monetary and Financial Code:

- it modernises the regime for so-called "professional" AIFs, in particular by simplifying the rules governing the composition of this type of AIF and creating a new corporate form without legal personality for specialised professional funds;
- it adapts the rules applicable to so-called "non-professional" AIFs, in order to ensure their complementarity with ELTIF 2.0 funds;
- it allows mutual fund companies (FCPEs) to invest in ELTIF 2.0 funds.

Version française

Le ministre de l'Économie, des Finances et de l'Industrie a présenté un projet de loi ratifiant l'ordonnance n° 2024-662 du 3 juillet 2024 portant modernisation du régime des fonds d'investissement alternatifs.

Elle introduit de nombreuses mesures visant à moderniser et simplifier le régime des FIA afin de rendre le droit français de la gestion de portefeuille plus attractif et compétitif, à tirer le meilleur parti de l'entrée en vigueur du Règlement (UE) 2023/606 (ELTIF 2.0) le 10 janvier 2024 et accroître ainsi le financement à long terme de l'économie européenne, nécessaire notamment pour financer la transition vers la neutralité carbone.

L'ordonnance modifie plusieurs dispositions du Code monétaire et financier :

- *il modernise le régime des FIA dits « professionnels », notamment en simplifiant les règles régissant la composition de ce type de FIA ??et en créant une nouvelle forme sociale sans personnalité juridique pour les fonds professionnels spécialisés ;*
- *elle adapte les règles applicables aux FIA dits « non professionnels », afin d'assurer leur complémentarité avec les fonds ELTIF 2.0 ;*
- *il permet aux sociétés d'OPCVM (FCPE) d'investir dans les fonds ELTIF 2.0.*

MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE AND REGULATION (MIFID II / MIFIR) / LE FPM PUBLIE UN GUIDE SUR MIFID II/MIFIR

FPM publishes MIFID II/MIFIR Guide

On 1 October 2024, the France Post Marché (FPM) published a MIFID II / MIFIR guide.

The guide focuses on facilitating the practical implementation of MiFID II and MiFIR requirements for its members. This 9th version aims to provide insight into key regulatory texts, guidelines, and practicalities associated with investor protection, transaction reporting, and transparency requirements. It includes references to relevant EU regulations and ESMA guidelines and underlines the importance of Legal Entity Identifiers (LEIs) for compliance. Additionally, it addresses market instruments, such as ADR/GDR, and emphasizes the evolution of the guide in response to ongoing regulatory changes and feedback from various financial institutions and associations.

Version française

Le 1er octobre 2024, le France Post Marché (FPM) a publié un guide MIFID II / MIFIR.

Le guide vise à faciliter la mise en œuvre pratique des exigences MiFID II et MiFIR pour ses membres. Cette 9e version vise à fournir un aperçu des principaux textes réglementaires, lignes directrices et aspects pratiques associés à la protection des investisseurs, à la déclaration des transactions et aux exigences de transparence. Il comprend des références aux réglementations européennes pertinentes et aux lignes directrices de l'ESMA et souligne l'importance des identifiants d'entité juridique (LEI) pour la conformité. De plus, il aborde les instruments de marché, tels que l'ADR/GDR, et met l'accent sur l'évolution du guide en réponse aux changements réglementaires en cours et aux commentaires de diverses institutions et associations financières.

SUSTAINABLE FINANCE / GREEN FINANCE

AFG reminds of end of transition period for ISR label / L'AFG rappelle la fin de la période de transition pour le label ISR

On 10 October 2024, the Association Française de Gestion (AFG) published a reminder on the end of the transition period for the ISR (Socially

Responsible Investing) label.

Following the implementation of the new ISR label framework on 1 March 2024, funds already certified have a transition period until 1 January 2025. The Secretariat of the label has outlined conditions for the application of these new rules by 1 January 2025. By that date, all labeled funds must comply with the requirements of the V3 framework.

Management companies must ensure two things:

- Funds retaining the ISR label meet the new obligations by 1 January 2025 (which will be audited on the certificate's anniversary date), and
- Funds not adopting V3 drop the label and update their communication accordingly.

Funds cannot keep the label if they don't meet V3 requirements. Management companies are expected to confirm to their certifiers by 31 December 2024, which funds will remain labeled in 2025. While the committee stresses compliance with the processes and portfolios by 1 January 2025, it acknowledges the potential delays in regulatory documentation validation, such as the prospectus. Therefore, an expectation of best efforts by the fund will be applied, evidenced by, for example, the submission of documents to the supervisor.

Version française

Le 10 octobre 2024, l'Association Française de Gestion (AFG) a publié un rappel sur la fin de la période de transition pour le label ISR (Investissement Socialement Responsable).

Suite à la mise en œuvre du nouveau cadre du label ISR au 1er mars 2024, les fonds déjà certifiés bénéficient d'une période de transition jusqu'au 1er janvier 2025. Le Secrétariat du label a précisé les conditions d'application de ces nouvelles règles d'ici le 1er janvier 2025. D'ici cette date, tous les fonds labellisés doivent être conformes aux exigences du cadre V3.

Les sociétés de gestion doivent s'assurer de deux choses :

- *Les fonds conservant le label ISR répondent aux nouvelles obligations au 1er janvier 2025 (qui seront auditées à la date anniversaire du certificat), et*
- *Les fonds n'adoptant pas la V3 abandonnent le label et mettent à jour leur communication en conséquence.*

Les fonds ne peuvent pas conserver le label s'ils ne répondent pas aux exigences V3. Les sociétés de gestion devraient confirmer à leurs certificateurs d'ici le 31 décembre 2024 quels fonds resteront labellisés en 2025. Si le comité souligne le respect des processus et des portefeuilles d'ici le 1er janvier 2025, il reconnaît les retards potentiels dans la validation des documents réglementaires, comme le prospectus. Par conséquent, le fonds s'attendra à ce que tous les efforts soient déployés, comme en témoigne, par exemple, la soumission de documents au superviseur.

GERMANY

ANTI-MONEY LAUNDERING / COMBATING THE FINANCING OF TERRORISM (AML / CFT)

BaFin updates Circular on high-risk countries

On 10 October 2024, the Federal Financial Supervisory Authority (BaFin) updated its Circular on high-risk countries.

Circular 08/2024 (GW) refers to third countries that have strategic deficiencies in their AML/CFT systems that pose material risks to the international financial system (high-risk jurisdictions).

Key points include:

- North Korea: The FATF remains concerned about North Korea's deficiencies in its AML/CFT system, particularly regarding the proliferation and financing of weapons of mass destruction. The FATF calls for stringent countermeasures, including terminating correspondence relations with North Korean banks and closing their subsidiaries or branches.
- Iran: Enhanced due diligence obligations apply to all business transactions involving Iran as per section 15 (3) no. 2 AMLA. Obligated entities must report business relationships and transactions related to Iran to BaFin.
- Other High-Risk Jurisdictions: Enhanced due diligence measures are also required for business transactions involving countries mentioned in Delegated Regulation (EU) 2016/1675, including Afghanistan and Myanmar. Financial institutions must increase the monitoring scope of these business relationships.
- General Decrees: BaFin has issued general decrees mandating the reporting of business relationships and transactions concerning North Korea and Iran. Obligated entities must follow these decrees and document all safeguarding and review measures comprehensively.
- The FATF's "Jurisdictions under Increased Monitoring" list includes countries with strategic deficiencies in AML/CFT efforts. The list as of June 2024 includes 21 countries, with recent additions Monaco and Venezuela.

This Circular replaces the previous circulars on the contents of the EU and FATF country lists due to deficiencies in the fight against money laundering, terrorist financing and proliferation financing.

Attention is also drawn to the sanctions on capital and payment transactions published on the homepage of the Deutsche Bundesbank.

DIRECTIVE ON SECURITY OF NETWORK AND INFORMATION SYSTEMS (NIS DIRECTIVE)

Deutscher Bundestag publishes draft NIS 2 Implementation (NIS2UmsuCG) and Cybersecurity Strengthening Act

On 30 September 2024, the Deutscher Bundestag published a draft NIS 2 Implementation (NIS2UmsuCG) and Cybersecurity Strengthening Act.

The draft law includes amendments to various existing laws to improve procedures and responsibilities related to information security, streamline administrative processes, establish mandatory identification for domain registrations, and promote the use of advanced IT security products. It also transposes the NIS-2 Directive. It includes various provisions to align German law with the NIS-2 Directive, such as the introduction of multi-level reporting obligations for incidents, integration of minimum security requirements into the Bundesamt für Sicherheit in der Informationstechnik (Federal Agency for Cybersequrity - BSI) Law and designation as competenet authority, and specific measures for data protection and cross-border cooperation within the EU.

The draft law goes beyond the mere scope of the EU Directive to ensure comprehensive security measures and functionalities specific to the national context, such as ensuring bidirectional data exchange and addressing sector-specific needs. It requires stricter requirements for numerous sectors. Businesses and organizations must address the challenges of cyber risk management, control, and monitoring. They also need to establish procedures for handling incidents and ensuring business continuity.

National specificities:

- The existing German method for identifying critical infrastructures, KRITIS, remains under NIS2
- Existing German KRITIS operators with critical facilities and thresholds will carry over to NIS2 as third entity type operators of critical facilities
- NIS2 essential and important entities are called specially important entities
- NIS2 sectors in Annex I and II are defined slightly differently – ICT service management and digital infrastructure are rolled into the German IT/Telco sector
- Existing KRITIS sectors will remain as separate set for critical operators

- Sector Public Administration is defined differently in Germany and will mostly include entities of the federal administration

The NIS2 Directive distinguishes between "essential" and "important" entities. The key difference lies in the level of oversight and penalties: important entities incur lower fines and are under reactive supervision by authorities, while essential entities are subject to proactive supervision. The German drafts use different terminology, referring to the entities as "very important" and "important".

Various requirements of the NIS2UmsuCG remain to be specified or defined by one or more legal ordinances (KRITIS-Verordnungen).

The deadline for implementation is 17 October 2024. The entry into force is expected for March 2025.

EU SANCTIONING REGIME

Deutscher Bundestag publishes draft Act amending Foreign Trade and Payments Act and other legal provisions

On 11 October 2024, the Deutscher Bundestag published a draft Act amending the Foreign Trade and Payments Act and other legal provisions.

This draft law serves to implement Directive (EU) 2024/1226 defining criminal offences and sanctions for infringements of Union restrictive measures and amending Directive (EU) 2018/1673 (Sanctions Directive). The purpose of the Directive is to harmonize sanctions law across Europe in order to promote efficient and uniform enforcement of sanctions by the EU Member States.

The core provision of the Sanctions Directive is the definition of prohibitions on sanctions, the violation of which must be made punishable by the EU Member States. The Directive also specifies the penalties for certain forms of circumvention of sanctions and violation of reporting obligations. It is also intended to punish the reckless violation of an export ban if military or dual-use goods are involved. The content of the offenses is supplemented by a series of accessory provisions: Penalties for punishing natural persons are specified, as are sanctions for legal persons. In addition, minimum standards are set for mitigating and aggravating circumstances, limitation periods are harmonized, necessary investigative instruments are specified and whistleblower protection is required. In addition, rules on cooperation between authorities and data transfer are included.

In connection with the audits to be carried out by the European Commission pursuant to Article 14 of Regulation (EU) 2022/2560, there is also a need for additional regulation with regard to the domestic distribution of responsibilities and powers, which is in the factual context of this amendment, even if it has no connection with the implementation of the directive. In Germany, the offenses to be punished under Article 3(1) of the Directive on Sanctions are predominantly regulated as criminal offenses in the Foreign Trade Act (Außenwirtschaftsgesetz - AWG). Germany is therefore already well positioned with regulations on enforcing sanctions. For the purpose of Europe-wide harmonization, some additions and adjustments are still required for the implementation of the directive.

a. Changes to the AWG:

- New economic sanctions measures have been introduced, such as extending criminal penalties for certain financial sanctions and transaction bans. The law now criminalizes various financial sector sanctions that were previously only subject to fines. This includes violations against certain transaction bans and specific prohibitions on financial services.
- Specific subsections of this regulation include: Disseminating false or misleading information, including incomplete details, to hide that a listed person or entity is the actual proprietor or beneficiary of funds or economic resources.
- The reporting obligations now cover a wider range of scenarios where individuals or entities must report information relevant to the enforcement of sanctions.
- Specific scenarios that qualify as particularly severe cases i.e., incomplete or inaccurate declarations to public authorities and use of third-party entities and it specifically targets cases where the violator exercises direct or indirect controlling influence over a third-country entity to conduct activities that would otherwise be prohibited under the sanctions.
- Penalizing negligent breaches of certain sanctions.

b. Changes to the Aufenthaltsgesetz (Residence Act):

- Introduction of a new provision to prevent the entry or transit through Germany of individuals listed under restrictive measures decided by the EU.

c. Changes to the Zollfahndungsdienstgesetz (Customs Investigation Service Act):

- Addition of compliance and enforcement responsibilities related to EU economic sanctions, allowing for prioritization in enforcement actions based on the nature and importance of threats identified by EU regulations.

d. Bundeskartellamt (Federal Cartel Office) responsibilities:

- New tasks and powers granted under EU regulation 2022/2560, including data exchange with the European Commission and competition authorities of other EU member states, and specific procedural rules for the enforcement of fines imposed by the European Commission.

The law enters into force on 20 May 2025.

FINANCIAL SUPERVISION

BaFin publishes update on test phase for XBRL submission reporting

On 10 October 2024, the Federal Financial Supervisory Authority (BaFin) published documents on the test phase for XBRL detectors.

They primarily address the modernization of national reporting requirements in Germany, with a specific focus on the transition to the XBRL format. The goal is that supervised entities in Germany transit to the XBRL format for their national reporting to BaFin and for that, they need to submit their reports (quantitative form components) via the Nationales Berichtswesen (NB) system in the "TEST: Versicherungsaufsicht" Fachverfahren during the test phase, which starts in October 2024 and ends mid-December 2024. By December 2024, all companies should have tested and become capable of submitting XBRL reports.

The changes expected in the national reporting system as BaFin transitions to XBRL include:

- Submission deadlines will be revised to accommodate the new reporting format and processes.
- Two new forms are introduced: Nw 247 for cyber insurance and Nw 271 for profit allocation of Pensionskasse.
- Companies will be required to submit informal explanations electronically. This requirement has already been implemented for forms Nw 674 and 675 for which, companies have to provide any necessary informal explanations through electronic means rather than traditional paper submissions.
- The transition aims to standardize the reporting interface and fully adopt the XBRL format, ensuring that only validated and checked reports enter the production database.

To ensure data integrity, reports will undergo plausibility checks, and erroneous reports will be rejected. Any anomalies or issues discovered during tests should be emailed to BaFin's dedicated address for national reporting issues. Documentation and communication for the testing process will be provided through BaFin's homepage and specific documents such as general test phase guidelines and XBRL-specific instructions. The productive implementation of the new system is planned for 2025 for all reporting dates from 31 March 2025, onward.

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

BaFin updates leaflet on suitability of managing directors according to KAGB

On 7 October 2024, the Federal Financial Supervisory Authority (BaFin) updated its leaflet on the suitability of managing directors according to German Capital Investment Code (Kapitalanlagegesetzbuch - KAGB).

The leaflet explains the professional and personal requirements for persons who are appointed as managing directors under the KAGB. It provides an overview of the associated notification obligations, including the documents to be submitted.

Key points include:

- Requirements for notifications and required documents for the appointment of managers (§ 34 KAGB).
- Procedures for submitting necessary criminal records and financial certifications.
- Regulations concerning the reliability, conflicts of interest, and availability of managers.
- Detailed guidance on submitting personal and professional details, including resumes and information on secondary activities.
- Specific instructions on document submissions and handling, particularly concerning the trade register extract.
- Emphasis on the completeness and accuracy of the information provided to the BaFin.

The guidelines apply to branches as well. It is stated that the personal and professional requirements for managers also extend to branches of capital management companies operating under the supervision of BaFin as per KAGB.

Deutscher Bundestag publishes draft Act transposing AIFMD II

On 11 October 2024, the Deutscher Bundestag published a draft Act transposing the Alternative Investment Fund Manager Directive II (AIFMD

2).

The Law transposes the Direcive on an 1:1 basis, meaning no gold-plating.

The adjustments to the new European requirements for fund managers who grant loans through investment funds create a level playing field in the EU. In addition, further changes to the German Investment Code (KAGB) are being made to enable German fund providers to issue competitive products and to offer investors more and better investment opportunities, for example in the case of citizen energy investments. Therefore, sectoral legislative changes are being made to address the transposition of AIFMD II.

Updates to the KAGB, WpHG (German Securities Trading Act), and Geldwäschegesetz (Anti-Money Laundering Act):

a. KAGB:

- Adjustments to the provisions for loan orignating funds.
- Incorporation of liquidity management tools to enhance market stability.
- Facilitating the introduction of competitive products by allowing closed-end public funds and new citizen investment opportunities in renewable energy projects.

b. WpHG:

- Clarification and possible removal of the exception for management companies and investment firms from the notification requirement under § 86 Absatz 1 Satz 1 WpHG. Under this article, management companies could produce or disseminate investment strategy recommendations to clients and were exempted from having to notify this to BaFin before producing or disseminating these recommendations.

The draft German law emphasizes the necessity for domestic funds to update their investment terms and sales prospectus by 16 April 2026, to comply with new regulations. It also aims to introduce competitive products and facilitate citizen investments in local renewable energy projects, emphasizing cost-effective opportunities for public participation in wind and solar energy.

The Federal Ministry of Finance is leading this initiative, and the deadline for implementation is 22 November 2024.

BaFin publishes notification of UCITS Management Company for intended distribution of German UCITS

On 25 October 2024, the Federal Financial Supervisory Authority (BaFin) published a notification of UCITS Management Company for the intended distribution of a German UCITS concerning section 312 of German Capital Investment Code (Kapitalanlagegesetzbuch - KAGB).

The document contains the following sections:

- Part 1 - Information on the management company or internally managed UCITS
  Section 1. Identification of the management company or internally managed UCITS
  Section 2. Facilities to investors
- Part 2 - Information on the UCITS
  Section 1. Identification of the UCITS
  Section 2. Arrangements made for marketing of units of UCITS
  Section 3. Attachments
- Part 3 - Confirmation of completeness

SUSTAINABLE FINANCE / GREEN FINANCE

BaFin applies ESMA Guidelines on fund names

On 1 October 2024, the Federal Financial Supervisory Authority (BaFin) applied the European Securities and Markets Authority (ESMA) guidelines on fund names using ESG terms.

The new rules specify the conditions under which a fund can use words such as environment, social, governance or other sustainability-related terms in its name. This is the first time that there are uniform requirements throughout Europe in this field. ESMA had published the Guidelines in the German version (ESMA34-1592494965-657) on 21 August 2024.

The name is often the first piece of information investors perceive about a fund. It can therefore significantly influence whether and how they

invest their money. The new rules are intended to prevent investors from being misled by sustainability-related terms in the fund name – and thus strengthen confidence in the products.

Funds that use the term "environment" in their name, for example, must now invest 80% of the fund's assets in an environmentally sustainable way. In addition, the fund management must observe certain minimum exclusions. This means that it is not allowed to invest in certain companies – such as those that earn their money mainly from the mining of lignite and coal (Paris-aligned Benchmark exclusions).

IRELAND

CONSUMER PROTECTION

CBI issues Dear CEO Letter on MiFID II Marketing Communications Requirements

On 10 October 2024, the Central Bank of Ireland (CBI) issued a Dear CEO Letter on the MiFID II Marketing Communications Requirements.

The purpose of this letter is to provide feedback to the industry on the findings of the review and to outline the CBI's expectations in relation to the application of the MiFID II Marketing and Advertising requirements.

Deficiencies were identified in the governance and control frameworks in place in some firms, in particular in cases where some or all of the Marketing and Advertising function is outsourced, and published marketing and advertising content relating to a small number of firms did not meet the expected standard of being fair, clear and not misleading. Firms regularly referred to their shift away from 'product' or 'service' specific content, and the move towards educational material' and 'thought leadership' content. There were also noticeable differences in what firms considered marketing and advertising content to be, and the majority of firms are not clearly identifying their marketing and advertising content as such. The CBI views any material, regardless of the means of dissemination, designed to promote or sell a financial instrument and/or an investment service, as marketing material.

Core findings:

1. Marketing and Advertising Content not Clearly Identifiable as Such
2. Poor Governance & Controls
3. Outsourcing Arrangements
4. Deficiencies in Published Marketing and Advertising Content
5. Monitoring of Published Marketing & Advertising Content and Compliance Function Review
6. Gaps in identification of Target Audience

The CBI requests all Irish authorised MiFID Investment Firms, Credit Institutions and Fund Management companies providing MiFID II services to retail clients to:

1. Review their Marketing and Advertising practices against the ESMA Report, and the findings, expectations and good practices set out in Schedule 1 of this letter. This review must be documented and must include details of actions taken to address the findings in the ESMA Report and this letter. This review should be completed and an action plan discussed and approved by the Board of each Firm by 31 January 2025, with the minutes of the relevant Board meeting reflecting the discussions and approval of the Board.
2. Where the firm was in scope of the review and received formal mitigating actions, the feedback in the ESMA Report and the findings, expectations and good practices set out in this letter should be considered in conjunction with those mitigation actions.

The Central Bank expects all Firms to adopt a proactive approach to the continuous evaluation of the effectiveness of all of their arrangements and practices to ensure that they are meeting the highest standards of investor protection and delivering fair outcomes that seek to secure their clients' interests.

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

CBI publishes Notice of Intention to implement ESMA Guidelines on funds' names using ESG or sustainability-related terms

On 21 October 2024, the Central Bank of Ireland (CBI) published a Notice of Intention in relation to the application of the ESMA Guidelines on funds' names using ESG or sustainability-related terms.

The notice sets out that the CBI expects full compliance with the Guidelines from 21 November 2024. The CBI will, in due course, consult on the incorporation of a provision in the Central Bank UCITS Regulations and AIF Rulebook that all UCITS management companies, UCITS which have not designated a UCITS management company, AIFMs, internally managed AIFs, EuVECA managers, EuSEF managers, ELTIF managers and MMF managers adhere to the Guidelines.

Department of Finance publishes Funds Sector 2030: A Framework for Open, Resilient & Developing Markets

On 22 October 2024, the Department of Finance published the Funds Sector 2030: A Framework for Open, Resilient & Developing Markets.

Given the size of the funds and asset management sector in Ireland, and the changes taking place within the sector, the Minister for Finance announced a Review to ensure that Ireland maintains its leading position in asset management and funds servicing; and that the framework for the sector is resilient, future-proofed, supportive of financial stability and a continued example of international best-practice. The Terms of Reference for the Review were published in April 2023. A public consultation ran from June to September 2023. An extended phase of stakeholder engagement followed the public consultation. In total, the Review Team met with over 100 firms and attended over 30 industry events.

The funds and asset management sector continues to face structural challenges including revenue pressure, driven by a combination of factors such as the growth in passive funds (which generate lower fees than active funds), fee compression, rising costs, and a lack of new products succeeding. The intensity of regulation has also increased. These challenges have forced consolidation across the industry. While there could be benefits at a domestic level, it will be important that investors have a sufficient range of choice and that new entrants and innovations can emerge, particularly within the EU.

Upcoming changes at an EU level, through the transposition of the revised AIFMD, will level the playing field for loan origination and recent changes to the ELTIF Regulation will be supported by Ireland's experience in retail distribution. The Department of Finance and the Central Bank should, through targeted changes, support growth in private assets, though with a focus on authorised and supervised structures.

Some of the recommendations are as follows:

- The principal focus of the policy work will be to enhance the leading role in public markets - ETFs and MMFs - and to undertake targeted measures to enhance the Department's role in private assets, primarily through regulated structures.
- The review team has made recommendations to better align the tax on investment funds and life assurance products with that of direct equities by removing deemed disposal and aligning the rate of tax to 33%. These are big changes, which could help many cohorts of society in saving and investing for major life events or for retirement. The roadmap to simplification is not straightforward and could take a few years to implement, if agreed by the next Government.
- Replacing the IREF regime with an entity–level tax to enable greater certainty and stability over the taxation of rental income arising in Ireland for both industry and the authorities. This would also allow consideration of tax fairness between entities using the IREF and those that do not, in its design. If such an entity level tax is introduced it must be stable to allow for long-term investment decisions to be made and the options for such a tax must be carefully considered. No substantive amendments are proposed to the REIT regime.
- A significant number of recommendations are presented to address potential risk in structured financed including enhanced transparency.
- Enhancements to the structures used for cooperation between Government and industry including an annual roundtable with the sector, chaired by the Minister for Finance, and greater senior official involvement from the Department of Finance at the funds and asset management steering group.

ITALY

ANTI-MONEY LAUNDERING / COMBATING THE FINANCING OF TERRORISM (AML / CFT)

Consiglio dei Ministri informs on European rules on TFR and crypto-assets

On 29 October 2024, the Consiglio dei Ministri published a Press release on the European Rules on Transfers of Funds and Crypto-Assets.

The Council of Ministers approved, in preliminary examination, a legislative decree adapting national legislation to the provisions of Regulation (EU) 2023/1113, concerning information accompanying transfers of funds and certain crypto-assets and amending Directive (EU) 2015/849 (TFR), and for the implementation of Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, as amended by Article 38 of that Regulation (EU) 2023/1113.

The decree amends Legislative Decree No. 231 of 21 November 2007 (the so-called anti-money laundering decree), and makes mere coordination amendments to Decree-Law No. 167 of 28 June 1990, on the recognition for tax purposes of certain transfers to and from abroad of money and securities.

In order to strengthen anti-money laundering safeguards in relation to crypto-assets:

- the already provided definitions of 'crypto-assets', 'crypto-asset services' and 'crypto-asset service providers' are amended, as provided for in Regulation (EU) 2023/1114;
- CASPs, i.e. legal entities authorised to provide one or more crypto-asset services to clients on a professional basis, are included in the category of 'banking and financial intermediaries' in order to ensure that they are subject to the same requirements and level of supervision, with regard to anti-money laundering profiles, provided for banking and financial intermediaries.
- with regard to the obligations to which CASPs will be subject by virtue of their inclusion among banking and financial intermediaries, the following are envisaged, among others:

1. the obligation to transmit to the Financial Intelligence Unit for Italy (FIU) aggregate data concerning its operations, in order to allow analyses to be carried out aimed at bringing to light any phenomena of money laundering or terrorist financing within certain territorial areas;
2. subjection to the supervision of the Bank of Italy, for anti-money laundering purposes;
3. CASPs are included among the entities where the Special Currency Police Unit of the Guardia di Finanza can carry out checks on money laundering phenomena;
4. the provisions on risk analysis and assessment are addressed, identifying measures to be implemented by CASPs in order to mitigate the risks attributable to transfers to or from self-hosted addresses.

DIRECTIVE ON SECURITY OF NETWORK AND INFORMATION SYSTEMS (NIS DIRECTIVE)

Italy transposes NIS2

On 1 October 2024, Italy published the Legislative Decree no 138/2024 transposing Directive (EU) 2022/2555 on measures for the high common level of cybersecurity across the Union, including amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972 (NIS2 Directive).

The NIS2 Directive establishes common cybersecurity measures across the EU to ensure a higher level of cybersecurity, particularly for critical sectors and entities. It replaces the earlier NIS Directive and aims for greater resilience against cyber threats.

The Italian transposition is in general line with the Directive. Key aspects include:

- To be in scope of the Directive, a company must quality as a medium and large enterprise, provide its services within the EU, and operate in sectors listed in the Directive's Annexes (banking included).
- Companies must conduct a self-assessment by the end of 2024 to determine if their services fall within the scope of the Legislative Decree. The Agency for National Cybersecurity (ACN) will finalize the list of essential and important entities by April 2025.
- Entities must report cyber incidents within 9 months of being notified of their inclusion on the applicability list (by January 2026), and IT risk management obligations will extend until October 2026.
- Non-compliance can lead to fines of up to €10 million or 2% of global turnover for significant entities, and up to €7 million or 1.4% for important entities.

The Decree entered into force on 16 October 2024 and started applying on 18 October 2024. As of that day, the NIS1 provisions are repealed.

PAYMENT SERVICES DIRECTIVE (PSD2)

Banca d'Italia publishes Revision of PSD2 and coordination with MiCAR

On 29 October 2024, the Banca d'Italia published the revision of Payment Services Directive (PSD2) and the coordination with Markets in Crypto-Assets Regulation (MiCAR).

The paper analyzes the evolutionary perspectives of the scope of application of the EU regulation on payment services in the context of the current process of revision of the PSD2, based on the proposals for a new directive (PSD3) and a regulation (PSR) published by the European Commission on 28 June 2023. Specific attention is paid to the different policy options for the European legislator with respect to the possible extension of the scope of application of the PSD3/PSR package to new entities (including, in particular, technical service providers) and new services (e.g. cash-in-shop).

Another relevant issue concerns the coordination of the revision of PSD2 with other EU sectoral disciplines, in particular MiCAR, the new regulation is distinguishing between the different categories of instruments (e-money tokens, asset-referenced tokens, other crypto-assets) and taking into account their suitability or not to perform a payment function.

REGULATION ON MARKETS IN CRYPTO-ASSETS (MICA)

Banca d'Italia publishes Division of competences between Bank of Italy and CONSOB in application of MiCAR

On 29 October 2024, the Banca d'Italia published the division of competences with CONSOB in the application of MiCAR.

The competences of the Bank of Italy and Consob in the field of crypto-assets are outlined in the implementing decree of Regulation (EU) 2023/1114 on markets in crypto-assets (MiCAR). Additional powers of the Bank of Italy are provided for by the implementing decree of Regulation (EU) 2023/1113 concerning the data accompanying transfers of funds and certain crypto-assets (Transfer of Funds Regulation recast - TFR recast).

The Bank of Italy and Consob have today published a document summarising for information purposes the competences of the two Authorities with regard to the application of the new rules.

The document recalls the responsibilities of the Bank of Italy:

- Prudential supervision and crisis management, with reference to issuers of asset-referenced tokens (ART), issuers of electronic money tokens (EMTs) and crypto-asset service providers (CASPs);
- Supervision of transparency, fairness of conduct and protection of EMT holders with reference to issuers of such crypto-assets;
- Supervisory for the fight against money laundering and terrorist financing with reference to CASPs and banking and financial intermediaries acting as issuers of ART and EMT), product intervention on EMTs as well as - when necessary to ensure the stability of the whole or part of the financial system - on ARTs and crypto-assets other than EMTs and ARTs. It is also worth mentioning the exclusive powers of the Bank of Italy relating to the supervision function of the payment system.

Similarly, the responsibilities attributed to CONSOB are:

- To supervise transparency, fairness of conduct, orderly conduct of trading and protection of holders of crypto-assets/customers, with reference to ART issuers and CASPs;
- Supervision of the requirements provided for by MiCAR, relating to the management of a crypto-asset trading platform, carried out by anyone, as well as the related organisation and outsourcing profiles;
- Supervision of the offer to the public and admission to trading of other-than-able crypto;
- Product intervention on ARTs and other-than crypto, when necessary to ensure investor protection, the orderly functioning and integrity of crypto-asset markets;
- On the prevention and prohibition of market abuse relating to crypto-assets;
- On the subject of combating the provision of services on crypto-assets without authorization and the offer of other-than crypto in the absence of a notified white paper.

CONSOB and Bank of Italy comply with ESMA Guidelines on Fund Names

On 29 October 2024, the Commissione Nazionale per le Società e la Borsa (CONSOB) notified ESMA that it complies with the Guidelines issued on the use of ESG or sustainability-related terms in fund names.

The Guidelines are also available on the Italian version of CONSOB's institutional website, together with the full text of the "Final report" in English (containing a summary of the responses to the consultation and the consequent observations of ESMA), useful for allowing a correct application of the Guidelines. They specify the requirements for the use of terms relating to environmental, social, governance (ESG) or sustainability in the naming of funds.

The Guidelines apply to managers as defined in Article 1, paragraph 1, letter q-bis, of the Consolidated Law on Finance (TUF), in accordance with and within the limits of the applicable European regulations, the TUF and the related implementing provisions.

The Guidelines apply from 21 November 2024 with reference to UCIs established from that date. For UCIs established before that date, managers have a transitional period of six months (ending on 21 May 2025) to comply.

JERSEY

ANTI-MONEY LAUNDERING / COMBATING THE FINANCING OF TERRORISM (AML / CFT)

JFSC updates countries and territories in AML/CFT/CPF Handbook

On 28 October 2024, the Jersey Financial Services Commission (JFSC) updated the countries and territories in the AML/CFT/CPF Handbook appendices.

JFSC has updated appendix D1 and appendix D2, in response to the latest FATF statements of 25 October 2024.

Effective immediately, countries and territories listed should be treated as?not compliant?with FATF Recommendations for the purpose of Article 17A of the Money Laundering Order.

Supervised persons should:

- review policies, procedures, and existing customer relationships, to assess the impact of these updates on their business
- take particular care when considering placing reliance on an obliged person based in one of these countries and territories
- discuss any concerns with supervisor

Supervised persons may be required to undertake additional actions to mitigate the risk.

LUXEMBOURG

ACCOUNTING

CSSF informs of CNC Q&A 24/033 publication on group consolidation and assessment of size criteria / La CSSF informe de la publication de la CNC FAQ 24/033 sur la consolidation des groupes et l'évaluation des critères de taille

On 23 October 2024, the Commission de Surveillance du secteur financier (CSSF) informed of the publication of the Q&A CNC 24/033 on the impact of change in the consolidation scope of a goup regarding the assessment of size criteria.

The law and accounting doctrine clarify the methods for calculating the numerical limits of the three size criteria (balance sheet total, net turnover and the average number of employees) for a group, as well as the practical application of the repetition criterion referred to in Article 36(1) of the Law on the Trade and Companies Register (RCS), but remain silent as to the impact of a change in the scope of consolidation of a group on the assessment of the size criteria.

Therefore, the purpose of the Q&A is to clarify the impact of such a change on the assessment of the size criteria for the categorisation of a group. Thus, the CNC is of the opinion that a change in the scope of consolidation of a group during the year N (through the acquisition or sale of subsidiary companies) should not result in a retrospective modification of the consolidated accounts of the financial statements of the years N-2 and N-1 in order to determine the category to which the group belongs.

The CNC considers that requiring such a retrospective modification of the scope of consolidation for financial years N-2 and N-1 – requiring the group to carry out a new fictitious consolidation exercise – for the sole purpose of categorising a group, is contrary to the objective of reducing the administrative burden pursued by the European legislator, as well as to the imperative of legal certainty.

Version française

Le 23 octobre 2024, la Commission de Surveillance du secteur financier (CSSF) a informé de la publication du Q&A CNC 24/033 sur l'impact de l'évolution du périmètre de consolidation d'un groupe concernant l'appréciation des critères de taille.

La loi et la doctrine comptable précisent les modalités de calcul des limites numériques des trois critères de taille (total du bilan, chiffre d'affaires net et effectif moyen) d'un groupe, ainsi que l'application pratique du critère de répétition visé à l'article 36(1) de la loi sur le registre du commerce et des sociétés (RCS), mais restent muettes quant à l'impact d'un changement du périmètre de consolidation d'un groupe sur l'appréciation des critères de taille.

L'objectif des questions-réponses est donc de clarifier l'impact d'un tel changement sur l'évaluation des critères de taille pour la catégorisation d'un groupe. Ainsi, le CNC estime qu'une modification du périmètre de consolidation d'un groupe au cours de l'année N (par acquisition ou cession de sociétés filiales) ne doit pas entraîner une modification rétrospective des comptes consolidés des états financiers du groupe. années N-2 et N-1 afin de déterminer la catégorie à laquelle appartient le groupe.

Le CNC considère qu'exiger une telle modification rétrospective du périmètre de consolidation pour les exercices N-2 et N-1 – obligeant le groupe à procéder à un nouvel exercice de consolidation fictif – dans le seul but de catégoriser un groupe, est contraire à la objectif de réduction de la charge administrative poursuivi par le législateur européen, ainsi qu'à l'impératif de sécurité juridique.

eCDF updates forms for 2025 annual accounts reporting / L'eCDF met à jour les formulaires pour le reporting des comptes annuels 2025

On 25 October 2024, the Plateforme électronique de Collecte des Données Financières (eCDF Platform) updated its forms for 2025 reporting.

The 2025 annual accounts forms only contain the following text changes:

Chart of accounts

The labels for the following fields have changed in the English version:

- 2655/2656
- 1763/1764
- 2695/2696
- 2701/2702
- 2707/2708
- 2713/2714

- 2719/2720

The labels for the following fields have changed in the German version:

- 0151/0152
- 2501/2502
- 0931/0932
- 0933/0934
- 0935/0936
- 1837/1838
- 2247/2248

Monthly / Quarterly VAT declaration

The fields 481 482 491 492 493 have been added.

Following field changes, rules have been modified or added for field 021.

Annual simplified declaration

The field 482 has been added.

The field 471 has been removed.

Following field changes, rules have been modified or added for field 012.

Annual declaration

The fields 481 482 491 492 493 have been added.

The fields 166 106 107 have been removed.

Following field changes, rules have been modified or added for field 012.

Information concerning the 2025 recapitulative statement forms has not yet been provided by the administration.

Version française

Le 25 octobre 2024, la Plateforme électronique de Collecte des Données Financières (Plateforme eCDF) a mis à jour ses formulaires de reporting 2025.

Les formulaires de comptes annuels 2025 contiennent uniquement les modifications de texte suivantes :

Plan comptable

Les libellés des champs suivants ont changé dans la version anglaise :

- *2655/2656*
- *1763/1764*
- *2695/2696*
- *2701/2702*
- *2707/2708*
- *2713/2714*
- *2719/2720*

Les libellés des champs suivants ont changé dans la version allemande :

- *0151/0152*
- *2501/2502*
- *0931/0932*
- *0933/0934*
- *0935/0936*

- *1837/1838*
- *2247/2248*

Déclaration de TVA mensuelle / trimestrielle

Les champs 481 482 491 492 493 ont été ajoutés.

Suite à des changements de champs, des règles ont été modifiées ou ajoutées pour le champ 021.

Déclaration annuelle simplifiée

Le champ 482 a été ajouté.

Le champ 471 a été supprimé.

Suite à des changements de champs, des règles ont été modifiées ou ajoutées pour le champ 012.

Déclaration annuelle

Les champs 481 482 491 492 493 ont été ajoutés.

Les champs 166 106 107 ont été supprimés.

Suite à des changements de champs, des règles ont été modifiées ou ajoutées pour le champ 012.

Les informations concernant les formulaires de relevé récapitulatif 2025 n'ont pas encore été fournies par l'administration.

ANTI-MONEY LAUNDERING / COMBATING THE FINANCING OF TERRORISM (AML / CFT)

CSSF updates FAQ on AML/CFT SRRC / La CSSF met à jour la FAQ sur la LBC/FT SRRC

On 7 October 2024, the Commission de Surveillance du secteur financier (CSSF) updated its FAQ on the AML/CFT summary report RC (SRRC), a report related to AML/CFT compliance for the collective investment sector in Luxembourg.

The questions relate to:

- Requirements for the preparation of the SRRC by the "Responsable du Contrôle" (RC) and "Responsable du Respect" (RR).
- Specific situations and exemptions, such as for certain types of investment funds like ELTIFs (European Long-Term Investment Funds).
- The procedure for submitting the SRRC to the Commission de Surveillance du Secteur Financier (CSSF) through the eDesk platform.
- The submission deadline and potential extensions 8an extension of two extra months is granted for the submission).
- Explanation of sample testing as a document-based review, including details on the sample size and types of documents reviewed.
- Clarification that although the RR can delegate technical submission responsibilities, they remain ultimately responsible for the submission.
- Access and use of the SRRC template by entities not within the scope of Circular CSSF 24/854 are currently not permitted.

Version française

Le 7 octobre 2024, la Commission de Surveillance du secteur financier (CSSF) a mis à jour sa FAQ sur le rapport de synthèse LAB/CFT SRRC, un rapport relatif à la conformité LAB/CFT pour le secteur des placements collectifs au Luxembourg.

Les questions portent sur :

- *Les conditions requises pour la préparation du SRRC par le "Responsable du Contrôle" (RC) et le "Responsable du Respect" (RR).*
- *Les situations particulières et exemptions, comme pour certains types de fonds d'investissement comme les ELTIF (Fonds Européens d'Investissement à Long Terme).*
- *La procédure de soumission du SRRC à la Commission de Surveillance du Secteur Financier (CSSF) via la plateforme eDesk.*
- *La date limite de dépôt et les éventuelles prolongations (une prolongation de deux mois supplémentaires est accordée pour le dépôt).*
- *L'explication des tests sur échantillons en tant qu'examen basé sur des documents, y compris des détails sur la taille de l'échantillon et les types de documents examinés.*
- *La clarification selon laquelle même si le RR peut déléguer les responsabilités techniques de la soumission, il reste responsable en dernier ressort de la soumission.*

- *L'accès et l'utilisation du modèle SRRC par des entités n'entrant pas dans le champ d'application de la circulaire CSSF 24/854 ne sont actuellement pas autorisés.*

CSSF updates Annex of Circular CSSF 22/822 on high-risk jurisdictions / La CSSF met à jour l'annexe de la circulaire CSSF 22/822 relative aux juridictions à haut risque

On 28 October 2024, the Commission de Surveillance du secteur financier (CSSF) updated the Annex of Circular CSSF 22/822 on:

1. high-risk jurisdictions on which enhanced due diligence and, where appropriate, counter-measures are imposed
2. jurisdictions under increased monitoring of the FATF

For jurisdictions under increased monitoring of the FATF, professionals should consider the deficiencies identified by the FATF in its statements and the risks arising from them for their business relationships and transactions with these jurisdictions.

The newly added jurisdictions are Algeria, Angola, Cote d'Ivoire, and Lebanon.

Version française

Le 28 octobre 2024, la Commission de Surveillance du secteur financier (CSSF) a mis à jour l'annexe de la circulaire CSSF 22/822 relative à :

1. *juridictions à haut risque auxquelles sont imposées des mesures de diligence raisonnable renforcées et, le cas échéant, des contre-mesures*
2. *juridictions sous surveillance accrue du GAFI*

Pour les juridictions soumises à une surveillance accrue du GAFI, les professionnels doivent prendre en compte les déficiences identifiées par le GAFI dans ses déclarations et les risques qui en découlent pour leurs relations commerciales et transactions avec ces juridictions.

Les juridictions nouvellement ajoutées sont l'Algérie, l'Angola, la Côte d'Ivoire et le Liban.

AUDIT MATTER

CSSF announces new procedures dedicated to Auditors / La CSSF annonce de nouvelles procédures dédiées aux commissaires aux comptes

On 22 October 2024, the Commission de Surveillance du secteur financier (CSSF) announced new procedures dedicated to the Audit Profession.

Starting from 18 November 2024, the CSSF will make available in eDesk all procedures related to the audit profession (candidates, statutory auditors and audit firms).

Audit professionals will be able to manage:

- Their career as statutory auditors, from application to approval
- The lifecycle of their audit firm, including obtaining the title and approval for statutory audits and assurance on sustainability reporting
- Access to procedures via MyGuichet will be deactivated from 6 November 2024, new procedures will need to be submitted through eDesk.

All your procedures will be simplified and accessible directly from eDesk. For any questions, please contact edesk@cssf.lu.

Version française

Le 22 octobre 2024, la Commission de Surveillance du secteur financier (CSSF) a annoncé de nouvelles procédures dédiées à la profession d'audit.

À compter du 18 novembre 2024, la CSSF mettra à disposition dans eDesk toutes les procédures liées à la profession d'audit (candidats, commissaires aux comptes et cabinets d'audit).

Les professionnels de l'audit seront capables de gérer :

- *Leur parcours de commissaire aux comptes, de la demande à l'agrément*
- *Le cycle de vie de leur cabinet d'audit, y compris l'obtention du titre et de l'approbation pour les audits légaux et l'assurance sur les rapports de développement durable*
- *L'accès aux démarches via MyGuichet sera désactivé à partir du 6 novembre 2024, les nouvelles démarches devront être déposées via eDesk.*

Toutes vos démarches seront simplifiées et accessibles directement depuis eDesk. Pour toute question, veuillez contacter edesk@cssf.lu.

DATA PROTECTION / GENERAL DATA PROTECTION REGULATION (GDPR) / EPRIVACY REGULATION (EPR)

Chambre des députés publishes Bill approving Agreement with Switzerland on exchange of classified information / Chambre des députés publie le projet de loi approuvant l'accord avec la Suisse relatif à l'échange d'informations classifiées

On 25 October 2024, the Chambre des députés approved the Agreement between the Government of the Grand Duchy of Luxembourg and the Swiss Federal Council on the reciprocal protection and the exchange of classified information, done in Luxembourg on 13 May 2024.

The Bill applies to activities, contracts, and agreements involving classified information conducted between Luxembourg and Swiss entities, including previously generated or exchanged classified information.

Classified contracts must include a security annex specifying the classified information, its security classification level, and the contractor's obligations to protect it. These contracts must comply with national laws and a copy of the security annex must be sent to the National Security Authority.

Visits requiring access to classified information from one Party by the other are subject to prior consent by the National Security Authority of the host Party.

The agreement provides for the equivalence of security classification levels:

Swiss: GEHEIM/SECRET/SEGRETO, VERTRAULICH/CONFIDENTIEL/CONFIDENZIALE, INTERN/INTERNE/AD USO INTERNO

Luxembourg: TRÈS SECRET, CONFIDENTIEL LUX, RESTREINT LUX

Classified information marked with high levels of secrecy (e.g., GEHEIM, SECRET) cannot be reproduced or translated without prior consent, and reproduced or translated documents must be properly marked and handled as the originals.

Reproduction or translation of highly classified information (e.g., GEHEIM, SECRET) requires prior consent, and must be properly marked and handled as the originals.

Classified information that is no longer necessary must be destroyed to prevent reconstruction or returned to the originating party if it’s highly classified.

Any disputes arising from the agreement must be resolved through consultations and negotiations, and not through judicial or third-party intervention.

The agreement will enter into force after all legal requirements are fulfilled, can be amended by mutual consent, and is valid indefinitely unless terminated by either Party.

Version française

Le 25 octobre 2024, la Chambre des députés a approuvé l'Accord entre le Gouvernement du Grand-Duché de Luxembourg et le Conseil fédéral suisse relatif à la protection réciproque et à l'échange d'informations classifiées, conclu à Luxembourg le 13 mai 2024.

Le projet de loi s'applique aux activités, contrats et accords impliquant des informations classifiées menés entre des entités luxembourgeoises et suisses, y compris des informations classifiées précédemment générées ou échangées.

Les contrats classifiés doivent comprendre une annexe de sécurité précisant les informations classifiées, leur niveau de classification de sécurité et les obligations de l'entrepreneur pour les protéger. Ces contrats doivent être conformes aux lois nationales et une copie de l'annexe de sécurité doit être envoyée à l'Autorité nationale de sécurité.

Les visites nécessitant l'accès à des informations classifiées d'une Partie par l'autre sont soumises à l'accord préalable de l'Autorité de sécurité nationale de la Partie hôte.

L’accord prévoit l’équivalence des niveaux de classification de sécurité :

Suisse : GEHEIM/SECRET/SEGRETO, VERTRAULICH/CONFIDENTIEL/CONFIDENZIALE, INTERN/INTERNE/AD USO INTERNO

Luxembourg : TRÈS SECRET, CONFIDENTIEL LUX, RESTREINT LUX

Les informations classifiées marquées d'un niveau élevé de secret (par exemple, GEHEIM, SECRET) ne peuvent pas être reproduites ou traduites sans

consentement préalable, et les documents reproduits ou traduits doivent être correctement marqués et traités comme les originaux.

La reproduction ou la traduction d'informations hautement classifiées (par exemple GEHEIM, SECRET) nécessite un consentement préalable et doit être correctement marquée et traitée comme les originaux.

Les informations classifiées qui ne sont plus nécessaires doivent être détruites pour empêcher la reconstruction ou restituées à la partie d'origine si elles sont hautement classifiées.

Tout différend découlant de l'accord doit être résolu par le biais de consultations et de négociations, et non par l'intervention d'un tribunal ou d'un tiers.

L'accord entrera en vigueur une fois que toutes les exigences légales auront été remplies, pourra être modifié par consentement mutuel et sera valable indéfiniment à moins qu'il ne soit résilié par l'une ou l'autre des parties.

EUROPEAN MARKET INFRASTRUCTURE REGULATION (EMIR)

CSSF reminds about end of transition period under EMIR refit / La CSSF rappelle la fin de la période de transition du EMIR refit

On 7 October 2024, the Commission de Surveillance du secteur financier (CSSF) announced the end of the Transition Period under the EMIR RTS and ITS on reporting.

Following the CSSF's Press Release 22/33 on EMIR Refit reporting that was published on 21 December 2022, counterparties to a derivative contract or entities responsible for reporting shall update all their outstanding derivatives to conform with the revised reporting requirements by 26 October 2024.

For all derivatives that remain outstanding after that date, counterparties shall submit a report with event type 'Update', unless they have submitted a report with the action type 'Modify' or 'Correct' for such derivatives before this date.

Further information on the actions to be taken before the end of the transition period can be found in Section 4.1 of the ESMA Final Report on Guidelines for reporting under EMIR.

Version française

Le 7 octobre 2024, la Commission de Surveillance du secteur financier (CSSF) a annoncé la fin de la période de transition des normes techniques du règlement EMIR en matière de reporting.

Suite au communiqué de presse 22/33 de la CSSF sur le reporting EMIR Refit publié le 21 décembre 2022, les contreparties à un contrat dérivé ou les entités chargées du reporting devront mettre à jour tous leurs dérivés en cours pour se conformer aux exigences de reporting révisées d'ici le 26 octobre 2024.

Pour tous les dérivés restant en cours après cette date, les contreparties doivent soumettre un rapport avec le type d'événement « Mise à jour », à moins qu'elles n'aient soumis un rapport avec le type d'action « Modifier » ou « Corriger » pour ces dérivés avant cette date.

De plus amples informations sur les mesures à prendre avant la fin de la période de transition sont disponibles à la section 4.1 du rapport final de l'ESMA sur les lignes directrices pour le reporting dans le cadre d'EMIR.

FINANCIAL SUPERVISION

CSSF publishes Circular CSSF 24/864 implementing EBA Guidelines on resubmission of historical data / La CSSF publie la circulaire CSSF 24/864 mettant en œuvre les lignes directrices de l'ABE sur la resoumission des données historiques

On 28 October 2024, the Commission de Surveillance du secteur financier (CSSF) published the Circular CSSF 24/864 implementing the Guidelines of the European Banking Authority (EBA) on resubmission of historical data under the EBA reporting framework (EBA/GL/2024/04), published on 9 April 2024.

The Guidelines set out a common approach to the resubmission by the entities in scope of historical data to the competent and resolution authorities in case there are errors, inaccuracies or other changes in the data reported in accordance with the supervisory and resolution reporting framework developed by the EBA. The Guidelines also set out general circumstances when the resubmission of historical data may not be required.

The common approach to the resubmission of historical data should apply unless there are specific requirements for the resubmission of data set out in the reporting framework developed by the EBA. The approach for the resubmission of historical data depends on the frequency and the

reference date of the affected reporting and the timing of the affected data in relation to the previous year-end.

The Guidelines do not embed any specific proportionality elements apart from those that are already built into the underlying reporting requirements and the filing rules. They do not tamper the primary obligation of financial institutions to report data that is of high quality, consistent and complete. Furthermore, they do not restrict the CSSF's already existing ability to require additional resubmissions on a case-by-case basis.

The Circular applies at the individual, sub-consolidated and consolidated level following the level of application of the actual reporting obligation concerned. It applies to NCAs and financial institutions, notably credit institutions, investment firms and 'financial conglomerates' (large groups) with immediate effect.

Version française

Le 28 octobre 2024, la Commission de Surveillance du secteur financier (CSSF) a publié la circulaire CSSF 24/864 mettant en œuvre les lignes directrices de l'Autorité bancaire européenne (ABE) sur la resoumission des données historiques dans le cadre de reporting de l'ABE (EBA/GL/2024/ 04), publiées le 9 avril 2024.

Les lignes directrices définissent une approche commune pour la nouvelle soumission par les entités concernées des données historiques aux autorités compétentes et de résolution en cas d'erreurs, d'inexactitudes ou d'autres changements dans les données déclarées conformément au cadre de reporting de surveillance et de résolution développé par le ABE. Les lignes directrices énoncent également les circonstances générales dans lesquelles la nouvelle soumission des données historiques peut ne pas être requise.

L'approche commune en matière de nouvelle soumission des données historiques devrait s'appliquer, à moins qu'il n'existe des exigences spécifiques pour la nouvelle soumission des données énoncées dans le cadre de reporting développé par l'ABE. L'approche adoptée pour la nouvelle soumission des données historiques dépend de la fréquence et de la date de référence du reporting concerné ainsi que du calendrier des données concernées par rapport à la fin de l'année précédente.

Les lignes directrices n'intègrent aucun élément de proportionnalité spécifique en dehors de ceux qui sont déjà intégrés dans les exigences de déclaration sous-jacentes et les règles de dépôt. Elles ne modifient pas l'obligation première des institutions financières de communiquer des données de haute qualité, cohérentes et complètes. Par ailleurs, elles ne limitent pas la capacité déjà existante de la CSSF d'exiger des resoumissions supplémentaires au cas par cas.

La Circulaire s'applique au niveau individuel, sous-consolidé et consolidé suivant le niveau d'application de l'obligation de reporting effective concernée. Elle s'applique aux ANC et aux établissements financiers, notamment aux établissements de crédit, aux entreprises d'investissement et aux « conglomérats financiers » (grands groupes), avec effet immédiat.

INFORMATION TECHNOLOGY (IT) / INFORMATION AND COMMUNICATIONS TECHNOLOGY (ICT)

CSSF updates reminder of procedures of transmission for KID and official fund documents (MR/AI) / La CSSF met à jour son rappel des modalités de transmission des KID et des documents officiels des fonds (MR/AI)

On 16 October 2024, the Commission de Surveillance du secteur financier (CSSF) published a reminder of the procedures of transmission for the Key Information Document (KID) and fund official documents (MR/AI).

As announced in the 5 April 2024 communication regarding the direct submission of filings to the CSSF, the collection procedures for the KID and the MR/AI will change starting 15 November 2024.

These documents will be collected exclusively through the following two methods, free of charge:

- Document upload via the dedicated eDesk procedure
- Automated submission of the documents via API (S3 protocol)

From 15 November 2024,

- Only the API (S3) channel or the eDesk approach will be authorised for submitting KIDs and official documents
- Any KID or official document submitted using the old transmission method (external channels) will not be processed by the CSSF.

A user guide detailing the submission procedures is available.

Version française

Le 16 octobre 2024, la Commission de Surveillance du secteur financier (CSSF) a publié un rappel des modalités de transmission du Document d'Information Clé (DIC) et des documents officiels des fonds (MR/AI).

Comme annoncé dans la communication du 5 avril 2024 relative à la transmission directe des déclarations à la CSSF, les modalités de collecte du KID et du MR/AI évolueront à compter du 15 novembre 2024.

Ces documents seront collectés exclusivement selon les deux modalités suivantes et gratuitement :

- *Téléchargement de documents via la procédure eDesk dédiée*
- *Soumission automatisée des documents via API (protocole S3)*

À partir du 15 novembre 2024,

- *Seul le canal API (S3) ou l'approche eDesk sera autorisé pour la soumission des KID et documents officiels*
- *Tout KID ou document officiel soumis selon l'ancien mode de transmission (canaux externes) ne sera pas traité par la CSSF.*

Un guide d'utilisation détaillant les modalités de soumission est disponible.

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

CSSF publishes results of Thematic Review on supervision of delegation of portfolio management by IFMs / La CSSF publie les résultats de sa revue thématique sur la supervision de la délégation de la fonction de gestion de portefeuille par les GFI

BACKGROUND

From 2021 to 2024, the CSSF carried out a thematic review on the supervision of the delegation of the portfolio management function by investment fund managers with a view to monitoring compliance with the UCITS and/or AIFMD framework and protecting the investors' interests. Following the analysis of the collected information, the CSSF provides the market with feedback on the CSSF's main findings and recommendations for improvement.

WHAT'S NEW?

On 23 October 2024, the CSSF published a Feedback Report on the Thematic Review on the delegation of the portfolio management function by IFMs.

In accordance with the Circular CSSF 18/698, the IFMs retain the responsibility, irrespective of their size, to put in place operational procedures to monitor the delegation(s). The procedures must clearly define "who does what, when and how" in the organisation of the IFM, as well as the documents retained to prove the existence of such controls. The portfolio management procedure should at least cover the specific items listed in points 477 and 478 of the Circular.

IFMs remain fully responsible for demonstrating that each delegate is qualified and capable of undertaking the PM function and that they were selected with all due care. IFMs should perform their own analysis to establish written reports, as required by points 461 to 463 and 469 of the Circular. A similar requirement applies to the ongoing monitoring of the delegated functions as foreseen in point 474 of the Circular, for which each IFM should determine its own key performance indicators.

The CSSF also underlines that due diligence processes cannot rely solely on the reception of self-assessment questionnaires or onsite visit memos. The conclusions the written reports should be validated, dated, and signed by the staff members empowered to validate according to the delegation framework procedure. Finally, in the case of an announcement of termination, the monitoring of the exiting delegate should be maintained – in compliance with all procedures – until the effective date of termination.

The conclusions of the written reports of the initial and periodic due diligence reports must also be validated, dated, and signed. The reasons for approving/rejecting or continuing/terminating the relationship with a delegate should be documented.

The CSSF expects IFMs to ensure and to control that:

- the IFM obtains from the delegate all the requested information in compliance with point 436 of the Circular. This information should enable IFMs to effectively monitor the activity of the delegate at any time,
- the contract indicates the investment policy, investment limits and other elements mentioned in point 492 of the Circular;
- the contract contains a clear clause giving the IFM the right to withdraw the mandate given to the delegate with immediate effect when justified by the investors' interests. The determination of the law/jurisdiction should be subject to a risk assessment taking into

consideration the UCIs'/investors' interests.

The CSSF expects that the IFM – including its internal control functions – will verify on a regular basis that the BCPs of the delegates/ subdelegates are adequate and that regular testings will be performed between the IFM and the delegates. If the results of the BCP are not satisfactory, the IFM should ensure a proper follow-up of the improvements.

To anticipate cases where IFMs would have to withdraw the mandate of a delegate with immediate effect, IFMs should put in place contingency plans should be put in advance. The CSSF recommends that:

- the contingency plan should describe the exit strategies developed by the IFM, consisting of transferring the delegated function either to another delegate or by integrating the function within the IFM itself;
- the IFM should assess the substitutability of the delegated function by identifying an alternative delegate. If no alternate is found, the IFM should describe the measures allowing it to perform the function itself;
- the IFM should evaluate the impacts of the exit strategy, notably by estimating the exit costs, resources and time required for a transfer to a new delegate or to the IFM itself;
- the contingency plan should describe the different steps of the delegation's exit and transfer process;
- the contingency plan should identify the person(s) who will be responsible for its implementation in the event of termination of the mandate;
- the IFM should proceed to a periodic reassessment of the feasibility of each exit strategy developed.

An IFM must ensure that the potential and effective conflicts of interest arising from the delegation are identified. This includes cases that may result from the establishment of reporting lines or intra-group relationships. It is the IFM's responsibility to establish the register of the conflicts at IFM level, which should at least contain the elements of the point 381 of the Circular. From a good governance point of view, the persons concerned by such conflicts should refrain from participating in the discussions and decisions relating to the delegates concerned.

IFMs should monitor the compliance with the rules of conduct and personal transactions in the context of the PM delegation and recommends that the rules are covered by their internal audit plan. The internal audit plan should include the monitoring of the delegated activities, covering all aspects of the delegations.

IFMs should have adequate human and technical resources to monitor the delegated functions. The CSSF expects that the human resources employed by the IFMs to the monitoring of the delegated functions are proportionate to the number of delegates. It is also the responsibility of the IFMs to ensure that the internal control functions have sufficient resources to perform qualitative and quantitative controls on the delegated PM function. The following criteria should at least be considered in determining whether the resources are sufficient:

- the number of delegates;
- the volume of assets under management where the PM function has been delegated;
- the number of UCIs/sub-funds concerned by such delegation;
- the nature and the complexity of the investment policies of the UCIs/sub-funds.

WHAT'S NEXT?

The CSSF invites all IFMs to perform, at the latest by the end of Q1/2025, a comprehensive assessment of how they monitor the delegation of their portfolio management function in light of the observations mentioned in the thematic review document and of the applicable regulatory requirements.

Version française

BACKGROUND

De 2021 à 2024, la CSSF a procédé à une revue thématique sur le contrôle de la délégation de la fonction de gestion de portefeuille par les gestionnaires de fonds d'investissement en vue de contrôler le respect du cadre OPCVM et/ou AIFMD et de protéger les intérêts des investisseurs. Suite à l'analyse des informations collectées, la CSSF fournit au marché un retour d'information sur les principales conclusions de la CSSF et des recommandations d'amélioration.

WHAT'S NEW?

Le 23 octobre 2024, la CSSF a publié un rapport d'expérience sur la revue thématique relative à la délégation de la fonction de gestion de portefeuille par les GFI.

Conformément à la circulaire CSSF 18/698, les GFI conservent la responsabilité, quelle que soit leur taille, de mettre en place des procédures opérationnelles de suivi de la ou des délégations. Les procédures doivent clairement définir « qui fait quoi, quand et comment » dans l'organisation du GFI, ainsi que les documents conservés pour prouver l'existence de tels contrôles. La procédure de gestion de portefeuille doit au moins couvrir les éléments spécifiques énumérés aux points 477 et 478 de la Circulaire.

Les GFI restent entièrement responsables de démontrer que chaque délégué est qualifié et capable d'assumer la fonction de PM et qu'il a été sélectionné avec tout le soin requis. Les GFI doivent procéder à leur propre analyse pour établir des rapports écrits, comme l'exigent les points 461 à 463 et 469 de la Circulaire. Une exigence similaire s'applique au contrôle continu des fonctions déléguées tel que prévu au point 474 de la circulaire, pour lequel chaque GFI doit déterminer ses propres indicateurs clés de performance.

La CSSF souligne également que les processus de due diligence ne peuvent pas reposer uniquement sur la réception de questionnaires d'auto-évaluation ou de mémos de visites sur place. Les conclusions des rapports écrits doivent être validées, datées et signées par les agents habilités à valider selon la procédure du cadre de délégation. Enfin, en cas d'annonce de résiliation, la surveillance du délégué sortant devra être maintenue – dans le respect de toutes les procédures – jusqu'à la date effective de résiliation.

Les conclusions des rapports écrits des due diligences initiales et périodiques doivent également être validées, datées et signées. Les raisons d'approuver/ rejeter ou de poursuivre/mettre fin à la relation avec un délégué doivent être documentées.

La CSSF attend des GFI qu'ils assurent et contrôlent que :

- *le GFI obtient du délégataire toutes les informations demandées conformément au point 436 de la Circulaire. Ces informations doivent permettre aux GFI de suivre efficacement l'activité du délégataire à tout moment,*
- *le contrat indique la politique d'investissement, les limites d'investissement et les autres éléments mentionnés au point 492 de la Circulaire ;*
- *le contrat contient une clause claire donnant au GFI le droit de retirer le mandat donné au délégataire avec effet immédiat lorsque les intérêts des investisseurs le justifient. La détermination de la loi/juridiction doit être soumise à une évaluation des risques prenant en considération les intérêts des OPC/investisseurs.*

La CSSF attend que le GFI – y compris ses fonctions de contrôle interne – vérifie régulièrement que les PCA des délégataires/sous-délégataires sont adéquats et que des tests réguliers soient effectués entre le GFI et les délégataires. Si les résultats du PCA ne sont pas satisfaisants, le GFI doit assurer un suivi approprié des améliorations.

Pour anticiper les cas où les GFI devraient retirer le mandat d'un délégué avec effet immédiat, les GFI devraient mettre en place des plans d'urgence qui devraient être mis en place à l'avance. La CSSF recommande :

- *le plan d'urgence doit décrire les stratégies de sortie développées par le GFI, consistant à transférer la fonction déléguée soit à un autre délégataire, soit à intégrer la fonction au sein même du GFI ;*
- *le GFI doit évaluer la substituabilité de la fonction déléguée en identifiant un délégataire alternatif. Si aucune alternative n'est trouvée, le GFI devra décrire les mesures lui permettant d'exercer lui-même la fonction ;*
- *le GFI doit évaluer les impacts de la stratégie de sortie, notamment en estimant les coûts de sortie, les ressources et le temps nécessaire à un transfert vers un nouveau délégataire ou vers le GFI lui-même ;*
- *le plan d'urgence doit décrire les différentes étapes du processus de sortie et de transfert de la délégation ;*
- *le plan d'urgence devra identifier la ou les personnes qui seront responsables de sa mise en œuvre en cas de cessation du mandat ;*
- *le GFI devrait procéder à une réévaluation périodique de la faisabilité de chaque stratégie de sortie développée.*

Un GFI doit s'assurer que les conflits d'intérêts potentiels et effectifs découlant de la délégation sont identifiés. Cela inclut les cas pouvant résulter de l'établissement de liens hiérarchiques ou de relations intra-groupe. Il appartient au GFI d'établir le registre des conflits au niveau du GFI, qui doit contenir au minimum les éléments du point 381 de la Circulaire. D'un point de vue de bonne gouvernance, les personnes concernées par de tels conflits devraient s'abstenir de participer aux discussions et décisions relatives aux délégués concernés.

Les GFI doivent contrôler le respect des règles de conduite et des transactions personnelles dans le cadre de la délégation PM et recommande que les règles soient couvertes par leur plan d'audit interne. Le plan d'audit interne doit inclure le suivi des activités déléguées, couvrant tous les aspects des délégations.

Les GFI doivent disposer de ressources humaines et techniques adéquates pour surveiller les fonctions déléguées. La CSSF attend que les ressources humaines employées par les GFI pour le suivi des fonctions déléguées soient proportionnées au nombre de délégués. Il est également de la responsabilité des GFI de s'assurer que les fonctions de contrôle interne disposent de ressources suffisantes pour effectuer des contrôles qualitatifs et quantitatifs sur la fonction PM déléguée. Les critères suivants devraient au moins être pris en compte pour déterminer si les ressources sont suffisantes :

- *le nombre de délégués ;*
- *le volume des actifs sous gestion pour lesquels la fonction PM a été déléguée ;*
- *le nombre d'OPC/compartiments concernés par cette délégation ;*
- *la nature et la complexité des politiques d'investissement des OPC/compartiments.*

WHAT'S NEXT?

La CSSF invite tous les GFI à réaliser, au plus tard d'ici la fin du premier trimestre 2025, une évaluation complète de la manière dont ils contrôlent la délégation de leur fonction de gestion de portefeuille à la lumière des observations mentionnées dans le document de revue thématique et des exigences réglementaires applicables.

CSSF publishes Circular 24/863 implementating ESMA Guidelines on funds' names using ESG terms / La CSSF publie la Circulaire 24/863 mettant en application les lignes directrices de l'ESMA sur les noms de fonds utilisant des termes ESG

BACKGROUND

On 14 May 2024, the European Securities and Markets Authority (ESMA) published a final report on the Guidelines on funds' names using environmental, social and governance (ESG) or sustainability-related terms.

The objective of the Guidelines is to ensure that investors are protected against unsubstantiated or exaggerated sustainability claims in fund names, and to provide asset managers with clear and measurable criteria to assess their ability to use ESG or sustainability-related terms in fund names.

WHAT'S NEW?

On 21 October 2024, the Commission de Surveillance du secteur financier (CSSF) published the Circular CSSF 24/863 implementing the ESMA Guidelines on funds' names using ESG or sustainability-related terms (ESMA34-1592494965-657).The Circular applies to all UCITS ManCos (as well as UCITS which have not designated a UCITS ManCo), AIFMs including internally managed AIFs, EuVECA, EuSEF, ELTIF and money market fund managers.The CSSF expects market participants, regardless of whether they are disclosing under Article 6, 8 or 9 of the SFDR, to carry out a self-assessment of the applicability of the Guidelines to the products they manage and to ensure compliance of fund names with these Guidelines.In this context, the CSSF reminds market participants of the following principles:

- Funds' names should not be misleading, as the disclosure of sustainability characteristics should be commensurate with the effective application of those characteristics to the fund.
- The CSSF expects adequate disclosure in the precontractual documentation of elements supporting the use of ESG or sustainability-related terms in funds' name.
- The list of ESG and sustainability-related terms mentioned in the Guidelines is not exhaustive. Accordingly, market participants are expected to review the names of all the financial products they manage and assess, on a case-by-case basis, whether the Guidelines apply to those products.
- Finally, the CSSF expects market participants to closely monitor and take due consideration of any further developments on this topic at European level.

The CSSF is granting a priority processing procedure ("PPP") to existing UCITS and AIFs that limit the update of their issuing document/ prospectus to amendments required in the context of the entry into force of the Guidelines. The amendment(s) must be limited to either a name change of at least one sub-fund or minor adjustments to the fund's/sub-fund's ESG engagement/SFDR precontractual disclosure. The conditions and modalities for benefiting from the PPP are further explained in the Fund naming confirmation letter.

WHAT'S NEXT?

The Guidelines and therefore the Circular will start applying to new funds three months after the publication date of the Guidelines in all EU official languages, on 21 November 2024, with a further six-month transition period for existing funds, so that the Guidelines will apply as from 21 May 2025 to existing funds.

The Circular applies in relation to the obligation of IFMs to act honestly and fairly in conducting their business as well as the obligation that all information included in marketing communications is fair, clear and not misleading.

Version française

BACKGROUND

Le 14 mai 2024, l'Autorité européenne des marchés financiers (ESMA) a publié un rapport final sur les lignes directrices concernant les noms de fonds utilisant des termes environnementaux, sociaux et de gouvernance (ESG) ou liés au développement durable.

L'objectif des lignes directrices est de garantir que les investisseurs sont protégés contre les allégations de durabilité non fondées ou exagérées contenues dans les noms de fonds, et de fournir aux gestionnaires d'actifs des critères clairs et mesurables pour évaluer leur capacité à utiliser des termes ESG ou liés à la durabilité dans les noms de fonds.

WHAT'S NEW?

Le 21 octobre 2024, la Commission de Surveillance du secteur financier (CSSF) a publié la Circulaire CSSF 24/863 mettant en œuvre les lignes directrices de l'ESMA sur les noms de fonds utilisant des termes ESG ou liés au développement durable (ESMA34-1592494965-657).La Circulaire s'applique à tous les OPCVM ManCo (ainsi qu'aux OPCVM qui n'ont pas désigné d'OPCVM ManCo), aux FIAM, y compris les FIA gérés en interne, aux EuVECA, EuSEF, ELTIF et aux gestionnaires de fonds monétaires.La CSSF attend des acteurs du marché, qu'ils fassent de la publicité au titre de l'article 6, 8 ou 9 du SFDR, qu'ils procèdent à une auto-évaluation de l'applicabilité des Orientations aux produits qu'ils gèrent et qu'ils s'assurent de la conformité des noms de fonds avec ces dernières lignes directrices.Dans ce contexte, la CSSF rappelle aux acteurs du marché les principes suivants :

- Les noms des fonds ne doivent pas être trompeurs, dans la mesure où la divulgation des caractéristiques de durabilité doit être proportionnelle à l'application effective de ces caractéristiques au fonds.
- La CSSF attend une divulgation adéquate dans la documentation précontractuelle des éléments soutenant l'utilisation de termes ESG ou liés à la durabilité dans le nom du fonds.
- La liste des termes liés à l'ESG et au développement durable mentionnés dans les Lignes directrices n'est pas exhaustive. En conséquence, les acteurs du marché sont censés examiner les noms de tous les produits financiers qu'ils gèrent et évaluer, au cas par cas, si les lignes directrices s'appliquent à ces produits.
- Enfin, la CSSF attend des acteurs du marché qu'ils suivent de près et prennent dûment en considération toute évolution ultérieure sur ce sujet au niveau européen.

La CSSF accorde aux OPCVM et FIA existants une procédure de traitement prioritaire (« PPP ») limitant la mise à jour de leur document d'émission/prospectus aux modifications requises dans le cadre de l'entrée en vigueur des Orientations. La ou les modifications doivent se limiter soit à un changement de nom d'au moins un compartiment, soit à des ajustements mineurs de l'engagement ESG/de la divulgation précontractuelle SFDR du fonds/compartiment. Les conditions et modalités pour bénéficier du PPP sont expliquées plus en détail dans la lettre de confirmation de dénomination du Fonds.

WHAT'S NEXT?

Les orientations et donc la circulaire commenceront à s'appliquer aux nouveaux fonds trois mois après la date de publication des orientations dans toutes les langues officielles de l'UE, le 21 novembre 2024, avec une période de transition supplémentaire de six mois pour les fonds existants, afin que les orientations s'appliquent. à compter du 21 mai 2025 sur les fonds existants.

La Circulaire s'applique à l'obligation des GFI d'agir honnêtement et équitablement dans la conduite de leurs activités ainsi qu'à l'obligation que toutes les informations incluses dans les communications marketing soient justes, claires et non trompeuses.

CSSF updates ELTIF application questionnaire / La CSSF met à jour le questionnaire de demande d'ELTIF

On 25 October 2024, the Commission de Surveillance du secteur financier (CSSF) updated its ELTIF application questionnaire.

New ELTIF applications must now fully comply not only with the provisions of Regulation (EU) 2015/760 on ELTIFs (as amended), but also with those of the Commission Delegated Regulation (EU) 2024/2759, published on 25 October 2024.

Existing Luxembourg-based ELTIFs that do not benefit from the grandfathering clause must make the necessary adaptations to comply with the provisions of the Delegated Regulation as soon as possible. Any significant changes must be notified to the CSSF.

The CSSF has updated the ELTIF application questionnaire to reflect the provisions of the Delegated Regulation. The relevant changes have mainly been made to sheet "5. REDEMPTIONS MATCHING".

The updated ELTIF application questionnaire must be used for all new applications submitted from 25 October 2024. The ELTIF application

questionnaire is intended to facilitate and speed up new ELTIF applications. It is therefore very important that the questionnaire is completed with due care and diligence. In light of the new provisions of the Delegated Regulation, it is also very important that the ELTIF prospectus includes appropriate and detailed information on the ELTIF's liquidity arrangements.

Version française

Le 25 octobre 2024, la Commission de Surveillance du secteur financier (CSSF) a mis à jour son questionnaire de demande d'ELTIF.

Les nouvelles demandes d'ELTIF doivent désormais être pleinement conformes non seulement aux dispositions du règlement (UE) 2015/760 sur les ELTIF (tel que modifié), mais également à celles du règlement délégué (UE) 2024/2759 de la Commission, publié le 25 octobre 2024.

Les ELTIF existants basés au Luxembourg qui ne bénéficient pas de la clause de grand-père doivent procéder aux adaptations nécessaires pour se conformer aux dispositions du Règlement Délégué dans les plus brefs délais. Tout changement significatif doit être notifié à la CSSF.

La CSSF a mis à jour le questionnaire de candidature ELTIF afin de refléter les dispositions du règlement délégué. Les modifications pertinentes ont principalement été apportées à la fiche « 5. AJUSTEMENT DES RACHATS ».

Le questionnaire de candidature ELTIF mis à jour doit être utilisé pour toutes les nouvelles candidatures soumises à partir du 25 octobre 2024. Le questionnaire de candidature ELTIF est destiné à faciliter et à accélérer les nouvelles candidatures ELTIF. Il est donc très important que le questionnaire soit rempli avec soin et diligence. À la lumière des nouvelles dispositions du Règlement Délégué, il est également très important que le prospectus de l'ELTIF contienne des informations appropriées et détaillées sur les modalités de liquidité de l'ELTIF.

CSSF reminds of new U1.1 reporting transmission procedures / La CSSF rappelle les nouvelles modalités de transmission du reporting U1.1

On 31 October 2024, the Commission de Surveillance du secteur financier (CSSF) reminded of the new U1.1 reporting transmission procedures.

As announced in the 5 April 2024 communication regarding the direct submission of filings to the CSSF, the methods for transmitting U1.1 reports will change from 15 November 2024.

The expected reports may be transmitted using the following methods:

- A dedicated eDesk procedure
- An API solution based on the submission of XML reports via the S3 protocol

It will still be possible to transmit U1.1 reports via external transmission channels until 28 February 2025.

A user guide detailing the submission procedures for the U1.1 reports is available.

For any questions, please contact edesk@cssf.lu.

Version française

Le 31 octobre 2024, la Commission de Surveillance du secteur financier (CSSF) a rappelé les nouvelles modalités de transmission du reporting U1.1.

Comme annoncé dans la communication du 5 avril 2024 relative à la soumission directe des déclarations à la CSSF, les modalités de transmission des déclarations U1.1 changeront à compter du 15 novembre 2024.

Les rapports attendus pourront être transmis selon les modalités suivantes :

- *Une procédure eDesk dédiée*
- *Une solution API basée sur la soumission de rapports XML via le protocole S3*

Il sera toujours possible de transmettre les rapports U1.1 via des canaux de transmission externes jusqu'au 28 février 2025.

Un guide d'utilisation détaillant les procédures de soumission des rapports U1.1 est disponible.

Pour toute question, veuillez contacter edesk@cssf.lu.

NATIONAL BUSINESS REGISTER

LBR announces new registration requirements for natural persons in Luxembourg / La LBR annonce de nouvelles conditions d'enregistrement

pour les personnes physiques au Luxembourg

On 14 October 2024, the Luxembourg Business Registers (LBR) published an FAQ on the Luxembourg national identification number.

There are important changes and procedures related to formalities at the Trade and Company Register (RCS) in Luxembourg, particularly concerning the implementation and integration of Luxembourg national identification numbers (NIN/Matricule) for natural persons.

The existing PDF requisition forms are being replaced by HTML forms that must be completed directly online.

Luxembourg national identification numbers must be provided for natural persons registered with the RCS. If a person without a NIN is registered at the RBE and later acquires one, that number must also be registered.

There will be a check for Luxembourg addresses' consistency with the National Register of Localities and Streets.

Detailed guidance is available in the "FAQ - Luxembourg national identification number" document provided. The FAQ details the necessary steps, updates, and documentary evidence required for registering or updating a NIN.

The new forms will clarify both the identity and usual residence of the individuals concerned, aligned with the requirements set out by the LBR and the National Registry of Natural Persons.

Version française

Le 14 octobre 2024, les Registres des Entreprises luxembourgeois (LBR) ont publié une FAQ sur le numéro d'identification national luxembourgeois.

Il existe des changements et procédures importants liés aux formalités au Registre du Commerce et des Sociétés (RCS) au Luxembourg, notamment concernant la mise en place et l'intégration des numéros d'identification nationaux luxembourgeois (NIN/Matricule) pour les personnes physiques.

Les formulaires de demande PDF existants sont remplacés par des formulaires HTML qui doivent être remplis directement en ligne.

Les numéros d'identification nationaux luxembourgeois doivent être fournis pour les personnes physiques inscrites au RCS. Si une personne sans NIN est inscrite au RBE et en acquiert un ultérieurement, ce numéro doit également être enregistré.

La cohérence des adresses luxembourgeoises avec le Registre National des Localités et des Rues sera vérifiée.

Des orientations détaillées sont disponibles dans le document « FAQ - Numéro d'identification national luxembourgeois » fourni. La FAQ détaille les étapes nécessaires, les mises à jour et les preuves documentaires requises pour l'enregistrement ou la mise à jour d'un NIN.

Les nouveaux formulaires clarifieront à la fois l'identité et la résidence habituelle des personnes concernées, conformément aux exigences fixées par la LBR et le Registre national des personnes physiques.

REGULATION ON DIGITAL OPERATIONAL RESILIENCE FOR THE FINANCIAL SECTOR (DORA)

CSSF publishes results of DORA readiness survey / La CSSF publie les résultats de l'enquête de préparation pour DORA

On 7 October 2024, the Commission de Surveillance du secteur financier (CSSF) published the results of the DORA readiness survey.

The CSSF launched in August 2024 a DORA readiness survey to nearly 500 entities which will fall under the DORA regulation, applicable as from 17 January 2025.

The objectives of the survey were twofold:

- Primarily, to assess the level of readiness as of 1 September by financial entities towards DORA, and capture the main challenges encountered by financial entities.
- Secondarily, to raise once more the awareness to those financial entities that are late in getting ready.

The survey consisted of a limited number of 10 closed questions around the following topics:

- GAP analysis and perceived readiness
- Top challenges encountered

With 90% of respondents having completed their DORA gap analysis, and despite the challenges encountered, the survey shows encouraging

progress by financial entities in their DORA compliance work. With more than four months to go before DORA applies, the financial place is still in a preparatory phase. More than two thirds of entities consider themselves to be partially ready, while almost a quarter of entities consider themselves to be almost ready.

Version française

Le 7 octobre 2024, la Commission de Surveillance du secteur financier (CSSF) a publié les résultats de l'enquête de préparation à DORA.

La CSSF a lancé en août 2024 une enquête de préparation au DORA auprès de près de 500 entités qui relèveront du règlement DORA, applicable à compter du 17 janvier 2025.

Les objectifs de l'enquête étaient doubles :

- *Principalement, évaluer le niveau de préparation au 1er septembre des entités financières envers DORA, et capturer les principaux défis rencontrés par les entités financières.*
- *Deuxièmement, sensibiliser à nouveau les entités financières qui tardent à se préparer.*

L'enquête comprenait un nombre limité de 10 questions fermées autour des sujets suivants :

- *Analyse des écarts et état de préparation perçu*
- *Principaux défis rencontrés*

Avec 90 % des personnes interrogées ayant réalisé leur analyse des écarts DORA, et malgré les défis rencontrés, l'enquête montre des progrès encourageants des entités financières dans leur travail de conformité DORA. A plus de quatre mois du dépôt de candidature de DORA, la place financière est encore en phase préparatoire. Plus des deux tiers des entités s'estiment partiellement prêtes, tandis que près d'un quart des entités s'estiment presque prêtes.

MALAYSIA

DATA GOVERNANCE

Malaysian Parliament passes Personal Data Protection (Amendment) Act 2024

On 31 July 2024, the Malaysian Parliament passed the Personal Data Protection (Amendment) Act 2024.

This Bill seeks to amend the Personal Data Protection Act 2010 (Act 709) to improve the provisions relating to the processing of personal data so to be in line with international standards and practices.

The Personal Data Protection Act 2010, which is referred to as the "principal Act" in this Act, is amended by substituting for the words "data user" and "data users", the words "data controller" and "data controllers" except in the definition of "register" under section 4, and section 9.

A new Division 1a of Part II refers to the accountability of personal data. Where a data controller has reason to believe that a personal data breach has occurred, the data controller shall, as soon as practicable, notify the Commissioner. Where the personal data breach causes or is likely to cause any significant harm to the data subject, the data controller shall notify the personal data breach to the data subject without unnecessary delay. A data controller who contravenes this commits an offence, and shall, on conviction, be liable to a fine not exceeding 250000 ringgit or imprisonment for a term not exceeding two years or both.

A new section 43a refers to data portability. A data subject may request the data controller to transmit his personal data to another data controller of his choice directly by giving a notice in writing by way of electronic means to the data controller.

The Act will come into operation on a date to be appointed by the Minister by notification in the Gazette and the Minister may appoint different dates for the coming into operation of different provisions of the Act.

SUSTAINABLE FINANCE / GREEN FINANCE

BNM publishes Climate Risk Stress Testing Methodology Paper FAQs and Feedback Statement

On 28 October 2024, the Bank Negara Malaysia (BNM) published a Climate Risk Stress Testing Methodology Paper, FAQs and a eedback Statement.

This methodology paper incorporates feedback received during the consultation period following the publication of the Discussion Paper (DP) on the 2024 Climate Risk Stress Testing Exercise on 30 June 2022.

The 2024 CRST exercise aims to enhance financial institutions' capabilities in the following areas:

- Improve understanding and appreciation among board, senior management, and staff of financial institutions on how the business and operations of the financial institutions could be impacted by climate-related risks;
- Explore novel approaches that could lead to better identification and measurement of financial institutions' exposures at risk to climate change; and
- Identify current gaps, specifically those related to data, measurement, methodology, technology, and capabilities, as well as potential solutions to these challenges.

In carrying out the 2024 CRST exercise, financial institutions are strongly encouraged to collaborate with one another to share experiences, build capacity, and collectively address relevant challenges, for example, sharing of climate-related data that may not be widely available. Financial institutions may leverage on existing industry platforms such as the Joint Committee on Climate Change (JC3) for this purpose. Financial institutions are expected to continue investing in and improving on the foundations that they have built in preparation for the 2024 CRST exercise.

The FAQs are intended to provide further clarification to financial institutions on common queries relating to the released methodology paper on "Climate Risk Stress Testing" dated 29 February 2024. This FAQ Version 3.0 includes additional questions that were gathered from financial institutions during and after the CRST workshop held on 23 September 2024.

The Bank received feedback from 83 financial institutions and 8 other stakeholders such as non-financial corporates. Respondents were generally supportive of the CRST, its objectives and overall approach. They suggested for the Bank to reconsider certain parameters of the CRST including the need for greater variation in the climate scenarios selected, a reduction in the minimum number of counterparty-level analysis conducted, and greater sharing of relevant climate and macro-financial data that are calibrated to Malaysia. In addition, respondents also highlighted anticipated

challenges faced by financial institutions in preparing for the climate risk stress testing and requested for the Bank to consider a more measured timeline for complying with the CRST.

NETHERLANDS

PENSION FUNDS

AFM reminds pension funds to inform clients about risks

On 8 October 2024, the Autoriteit Financiële Markten (AFM) reminded pension funds to inform clients about risks.

With the transition to the new pension scheme, pension funds will make decisions that affect participants. They must communicate with them in a timely, clear, correct and balanced manner. In a new report, the AFM notes improvements in communication to participants, but still sees too often that pension funds are not clear enough about the negative consequences and risks of their decisions.

When using more flexible indexation rules, a quarter of the pension funds did not inform all participants of the information made available. Only a third of the pension funds mention the negative consequences of the relaxed indexation in the first or second layer of information. This is striking because these pension funds often prominently mention that the board has carefully weighed up all interests and considers the decision to be balanced. Also in the communication about the bridging plan, the emphasis in the first layer of information was often on the opportunities and benefits, and participants were only made aware of the risks in deeper layers of information.

The insights from this study are more broadly applicable to participant communication during and after the pension transition. The AFM therefore calls on the pension sector to use the findings and recommendations from this investigation to implement improvements in all (transitional) communication to participants where possible. A number of important recommendations:

- By thinking in advance about how a decision can be explained to participants, directors ensure that the decision-making process takes place more from the perspective of their participants.
- Pension funds must make it clear that their decision has positive and negative effects and risks for certain groups of participants. They must explain why the decision is in the best interest of the participants, given that there are also negative consequences for certain groups of participants.
- If a pension fund makes the information available (digitally), the AFM expects it to actively and concretely draw the attention of all participants to the information, for example via a direct link in the e-mail to participants.
- Pension funds must write down information in an understandable way and place it on their website in a logical way.
- It is important that the information in each information layer is balanced, because not all participants will read the deeper layers of information. Risks and negative effects therefore also belong in the first layer of information. The explanation of the consequences of a decision have to be understood by a participant without background knowledge. All too often, participant communication contains jargon and complex explanations. The AFM expects each pension fund to periodically assess whether information, including the layering, is sufficiently clear and understandable for the participant population.
- Funds should inform their participants as soon as possible after a decision; at least within a month. Pension funds that submit a bridging plan to DNB must even do so within one week.

REGULATION ON DIGITAL OPERATIONAL RESILIENCE FOR THE FINANCIAL SECTOR (DORA)

Rijksoverheid reminds of entry into force of Act on Promotion of Digital Resilience for Companies

On 1 October 2024, the Rijksoverheid (Government of the Netherlands) reminded all relevant entities of the entry into force of the Act on the Promotion of Digital Resilience for Companies.

The law provides a legal basis to inform and advise non-vital businesses more quickly and easily about digital vulnerabilities, but also about cyber threats and incidents. This is especially important for SMEs, where sufficient cybersecurity in processes, products and services is still a point of attention.

The law allows for a direct exchange of information between government organizations that are involved in digital security. These are the National Cyber Security Centre (NCSC), the Computer Security Incident Response Team (CSIRT) for digital services and the DTC.

Due to increasing threats, there is an urgent need to take further steps to structurally inform Dutch businesses about specific digital threats and vulnerabilities. The legal anchoring of the sharing of information with the non-vital business sector from 1 October 2024 goes to that direction.

RISK MANAGEMENT

AFM publishes Guide on risk management using ESG data

On 28 October 2024, the Autoriteit Financiële Markten (AFM) published a Guide on risk management using ESG data.

The AFM supervises compliance with the rules for controlled and ethical business operations, which apply to investment firms and managers of investment institutions and UCITS. This also includes the supervision of compliance with European legislation that sets requirements with regard to the integration of sustainability risks into business processes and risk management. To meet these requirements, asset managers need ESG data to identify and integrate relevant sustainability risks, measure the negative impact of investment decisions on the company's ESG objectives, and define criteria around the 'no significant harm' principle. Asset managers can obtain this data directly from the issuer, apply or develop their own methods to calculate ESG data, or purchase from third-party data providers. The availability, reliability and comparability of this data is a challenge. As a result, the data needs of asset managers cannot be fully met (in the short term).

Ensuring the reliability and independence of ESG data is an important condition for the adequate management and integration of sustainability risks in business operations and investment policy. The AFM has conducted an exploration into the management of risks related to the use of ESG data. This has given the AFM insight into the way in which ESG data is handled and how it is verified whether the data is correct and complete.The AFM is happy to share these observations so that they can help asset managers set up processes, systems and internal controls for ESG data risk management:

- Asset managers have set up the governance structure for managing ESG data risks in different ways
- Many asset managers use (one or more) external data providers for the majority of their ESG data needs
- Using a clear definition of data risk helps asset managers identify and manage this risk
- All asset managers have both proactive and reactive policies and control processes in place to ensure the quality of ESG data

SPAIN

DIRECTIVE ON THE PROTECTION OF PERSONS WHO REPORT BREACHES OF UNION LAW (WHISTLEBLOWERS DIRECTIVE)

Spain publishes Royal Decree 1101/2024 approving Statute of Independent Authority for the Protection of Whistleblowers

On 30 October 2024, Spain published the Royal Decree 1101/2024, of 29 October, approving the Statute of the Independent Authority for the Protection of Whistleblowers (Autoridad Independiente de Protección del Informante – A.A.I.).

The Law 2/2023 of 20 February on the protection of persons who report regulatory breaches and the fight against corruption, approved in compliance with Directive 2019/1937 on the protection of persons who report breaches of Union law, has allowed Spain to have a complete regulatory and institutional framework with which to respond effectively to the need for protection of those who report on infringements of the legal system that affect or undermine the general interest.

A.A.I., is an independent administrative authority at the state level with its own legal personality and full public and private capacity, which will act in the development of its activity and for the fulfilment of its purposes, with full autonomy and organic and functional independence with respect to the Government, the entities that make up the public sector, the public authorities or any public or private entity in the exercise of its functions.

The Organic Statute of the AAI is made up of 39 articles and is structured into seven chapters: Chapter I "General Provisions" (Articles 1 to 7); Chapter II "Organizational structure of the Independent Authority for the Protection of Whistleblowers, A.A.I.' (Articles 8 to 22), with four sections: "Organizational Structure", "Presidency", "Advisory Committee on the Protection of Whistleblowers" and "Other Bodies"; Chapter III "Staff at the service of the Independent Authority for the Protection of Whistleblowers, A.A.I." (Articles 23 to 28); Chapter IV economic-financial, budgetary and patrimonial regime' (Articles 29 a 35), with two sections: Economic-financial, patrimonial and contracting regime; Chapter V "Legal advice from the Independent Authority for the Protection of Whistleblowers, A.A.I." (Article 36); Chapter VI "Circulars of the Independent Authority for the Protection of Whistleblowers, A.A.I." (Article 37) and, finally, Chapter VII "Annual report and special reports of the Independent Authority for the Protection of Whistleblowers, A.A.I." (Articles 38 and 39).

This Royal Decree entered into force on 31 October 2024.

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

CNMV publishes Consultation for draft Circular amending three Circulars

On 7 October 2024, the Comisión Nacional del Mercado de Valores (CNMV) published a consultation for a draft Circular amending three circulars in relation to different areas:

1. Accounting area, with the amendment of Circular 11/2008 on accounting standards, annual accounts and statements of confidential information of venure capital entities to:

- include the ELTIFs among those that present the models of public and reserved information statements;
- submit monitoring reports on the qualifications included in the audit reports on venture capital entities through the CIFRADOC/CNMV service, and
- modify financial reporting templates to accomodate recent regulatory changes.

2. Depository supervision and monitoring function, with amendments to Circular 4/2016 on the functions of depositaires of funds and entities regulated by law 22/2014, so that depositaroy of regulated entities send the annual compliance report of their surveillance and supervision function through CIFRADOC/CNMV service.

3. Operational aspects of funds, with amendment of Circular 6/2008 on determining the NAV and operational aspects of funds, to:

- adapt the rules regarding performance management fees to the requirements of the ESMA Guidelines for harmonised UCITS funds and certain types of AIFs
- remove references to the liquidity ratio on funds of financial nature, deleted by Royal Decree 1180/2023 on investor compensation systems and implementin regulations of Law 35/2003 on collective investment schemes.

Comments may be sent in writing up to 25 November 2024.

CNVM notifies ESMA of its compliance with Guidelines on fund names that use the term ESG or terms related to sustainability

On 22 October 2024, the Comisión Nacional del Mercado de Valores (CNMV) published a press release on notifying ESMA of compliance with the Guidelines on the denominations of funds that use ESG terms or terms related to sustainability.

From now on, the CNMV will take these criteria into account in the authorisation and registration and supervision procedures. The purpose of these guidelines is to specify the circumstances in which fund names that use ESG or sustainability-related terms are unfair, unclear, or misleading. To this end, common standards are established for fund managers when promoting UCITS and AIFs using a term related to transition, impact, ESG or sustainability in their name, thus increasing harmonisation at European level and investor protection. In particular, these guidelines refer to the obligation of managers to act honestly and loyally in the exercise of their activity, as well as to the obligation that all information included in commercial communications is impartial, clear and not misleading.

These guidelines shall apply to all fund documentation and marketing communications addressed to investors or potential investors in UCITS and AIFs, including where they have been set up as a EuVCA, ESEF, ELTIF and MMF.

The guidelines will apply from 21 November 2024. Any new funds created after this date must be applied immediately. Fund managers that already exist will have a period of six months from the date of application, until 21 May 2025.

The practical application of these guidelines will require the specification or clarification at European level of some issues, in particular when it will be considered a "significant" investment and the application of the exclusion criteria to green bonds (regardless of the classification of the issuer's economic activity). Both issues, of particular relevance, are being addressed by ESMA and the CNMV is actively participating in the debate with the aim of clarifying them as soon as possible.

PENSION SCHEMES

Spain publishes Royal Decree 1086/2024 amending Regulation on pension plans and funds for promotion of occupational pension plans

On 23 October 2024, Spain published the Royal Decree 1086/2024, of 22 October, amending the Regulation on pension plans and funds, approved by Royal Decree 304/2004, of 20 February, for the promotion of occupational pension plans.

The updates aim to boost the use and management of employment pension plans in Spain, ensuring they align more closely with sustainability goals and provide better information transparency and legal clarity. More specifically:

- The Commission of Special Control must annually publish information on sustainability policies, political involvement, and the exercise of political rights on the Ministry of Inclusion, Social Security, and Migrations' website.
- The decree provides an adaptation period for individuals in partial retirement as per Social Security norms. Furthermore, it corrects some erroneous references in the current regulations for better clarity.
- Both the Commission Promotora y de Seguimiento and the Commission of Special Control are authorized to seek legal advice from the Legal Service of the Social Security Administration when necessary.
- Clarifications are made regarding the remuneration of the members of the Commission of Special Control, specifying that members are entitled to compensation related to meeting participation and additional remuneration for members taking on extended roles.
- Partial retirees will preferentially be considered as participants for partial to full retirement funding under the pension plans.
- Modifications are made to how employment-based pension plans can be integrated into public or private pension funds.
- Clarifications are given about the mobilization of rights of participants and beneficiaries in simplified employment pension plans to other employment plans.
- The modifications also deal with the extension of pension plans to cover workers without existing employer-promoted plans, such as the self-employed, aligning with broader EU regulations about disclosure of sustainability information within financial services.

SWITZERLAND

COMPANY LAW

Switzerland extends offering on EasyGov.swiss / La Suisse étend son offre sur EasyGov.swiss

On 15 October 2024, Der Bundesrat / Le Conseil fédéral published a press release about extending the offering on EasyGov.swiss.

The press release outlines two new administrative services provided by EasyGov.swiss for businesses in Switzerland: moving a business and closing a business.

Moving a Business allows businesses to update their address with various authorities in one step, making it simpler to notify changes across multiple registrations such as the commercial register, VAT, insurance, and more.

Closing a Business guides businesses through all necessary steps for closure, including liquidation and deregistration. For legal entities and capital companies, a notary is still required for some steps, but the platform facilitates the overall process.

EasyGov also supports applications for frontier worker permits in the canton of St. Gallen and aims to expand its digital services further. Since its launch in 2017, it serves over 100,000 registered businesses.

Version française

Le 15 octobre 2024, le Conseil fédéral a publié un communiqué de presse concernant l'extension de l'offre sur EasyGov.swiss.

Le communiqué présente deux nouveaux services administratifs proposés par EasyGov.swiss pour les entreprises en Suisse : le déménagement d'entreprise et la fermeture d'entreprise.

Déménager une entreprise permet aux entreprises de mettre à jour leur adresse auprès de diverses autorités en une seule étape, ce qui simplifie la notification des modifications sur plusieurs enregistrements tels que le registre du commerce, la TVA, l'assurance, etc.

Closing a Business guide les entreprises à travers toutes les étapes nécessaires à la fermeture, y compris la liquidation et la radiation. Pour les personnes morales et les sociétés de capitaux, la présence d'un notaire est toujours requise pour certaines démarches, mais la plateforme facilite l'ensemble de la démarche.

EasyGov prend également en charge les demandes de permis de travailleur frontalier dans le canton de Saint-Gall et vise à étendre davantage ses services numériques. Depuis son lancement en 2017, il dessert plus de 100 000 entreprises enregistrées.

PRUDENTIAL SUPERVISION / SINGLE SUPERVISORY MECHANISM (SSM) / SINGLE RESOLUTION MECHANISM (SRM) / SINGLE RESOLUTION FUND (SRF)

FINMA launches Consultation on FINMA Insolvency Ordinance / La FINMA lance une consultation sur l'ordonnance de la FINMA sur l'insolvabilité

On 9 October 2024, the Eidgenössische Finanzmarktaufsicht (FINMA) launched a consultation on a new Ordinance on Insolvency Proceedings at Financial Institutions.

This new ordinance will replace three existing ordinances: the FINMA Banking Insolvency Ordinance, the FINMA Insurance Bankruptcy Ordinance and the FINMA Collective Investment Schemes Bankruptcy Ordinance. The new ordinance has been updated to reflect findings from theory and practice. The consultation will last until 9 December 2024.

The revisions to the Banking Act and Insurance Supervision Act, effective from January 2023 and January 2024 respectively, necessitated changes to these existing ordinances. As a result, FINMA has created a consolidated FINMA Insolvency Ordinance to standardize procedures across all financial market institutions.

The new ordinance aims to unify procedural rules while considering the specific characteristics of different institutions. It maintains a chronological structure for restructuring and bankruptcy procedures, placing restructuring provisions before bankruptcy provisions.

Version française

Le 9 octobre 2024, l'Eidgenössische Finanzmarktaufsicht (FINMA) a lancé une consultation sur une nouvelle ordonnance sur les procédures d'insolvabilité des établissements financiers.

Cette nouvelle ordonnance remplacera trois ordonnances existantes : l'ordonnance de la FINMA sur l'insolvabilité bancaire, l'ordonnance de la FINMA sur la faillite des assurances et l'ordonnance de la FINMA sur la faillite des placements collectifs de capitaux. La nouvelle ordonnance a été mise à jour pour refléter les conclusions de la théorie et de la pratique. La consultation durera jusqu'au 9 décembre 2024.

Les révisions de la loi sur les banques et de la loi sur la surveillance des assurances, entrées en vigueur respectivement en janvier 2023 et janvier 2024, ont nécessité des modifications de ces ordonnances existantes. En conséquence, la FINMA a créé une ordonnance consolidée de la FINMA sur l'insolvabilité afin d'harmoniser les procédures entre tous les établissements des marchés financiers.

La nouvelle ordonnance vise à unifier les règles procédurales tout en tenant compte des spécificités des différentes institutions. Il maintient une structure chronologique pour les procédures de restructuration et de faillite, plaçant les provisions pour restructuration avant les provisions pour faillite.

UNITED KINGDOM

BENCHMARKS

FCA publishes press release on the end of LIBOR

On 1 October 2024, the Financial Conduct Authority (FCA) published a press release on the end of London Interbank Offered Rate (LIBOR).

The press release was published jointly by the Bank of England, the FCA and the Working Group on Sterling Risk-Free Reference Rates (Working Group).

On 30 September 2024, the remaining synthetic LIBOR settings were published for the last time and LIBOR came to an end. All 35 LIBOR settings have now permanently ceased. The transition away from LIBOR, once referenced in an estimated $400 trillion of financial contracts, has made financial markets safer, more stable and fit for modern use.?Synthetic LIBOR was a temporary bridge to give firms more time to move outstanding legacy LIBOR-linked contracts towards alternative RFRs, allowing for an orderly cessation.

Market participants are encouraged to continue to ensure they use the most robust rates for the relevant currency, such as Sterling Overnight Index Average (SONIA) for GBP and Secured Overnight Financing Rate (SOFR) for USD. Market participants should ensure their use of term risk-free reference rates, such as term SONIA and term SOFR are limited and remain consistent with the relevant guidance on best practice on the scope of use.

With the transition away from LIBOR completed, the Bank, the FCA and Working Group remind market participants that credit sensitive rates (CSRs) should not emerge as successor rates, supported by the Financial Policy Committee (FPC) view?that these rates are not robust or suitable for widespread use as a benchmark. In particular, the?FCA?and?FPC?have communicated to the market that USD CSRs have the potential to reintroduce many of the financial stability risks associated with LIBOR.

CONSUMER PROTECTION

FCA publishes portfolio letter on expectations for financial advisers and investment intermediaries

On 7 October 2024, the Financial Conduct Authority (FCA) published a portfolio letter on its expectations for financial advisers and investment intermediaries.

FCA's priorities over the next two years are to:

- The FCA will focus on retirement income advice, ongoing advice services, ensuring that firms responsible for harm (i.e. 'polluter pays') are held accountable, and monitoring industry consolidation.
- Firms must implement and continuously comply with the Consumer Duty, with evidence of their compliance available for inspection.
- The FCA encourages firms to engage in the review to help clients achieve their financial goals.

The FCA's priorities will be underpinned by:

- Increased industry engagement and collaboration
- A forward-looking and data-led approach maximizing the use of data

FCA’s expectations in relation to:

- Retirement income advice
- Ongoing advice services
- Polluter pays
- Acquisitions

The FCA expects the firms to:

- Notify the FCA and get the FCA's approval to acquire or increase control in a firm the FCA regulates.
- Ensure the delivery of good outcomes is central to firm's culture. The leadership, governance, oversight arrangements and controls should be effective, adequately resourced, and commensurate with growing size and complexity.
- Undertake adequate due diligence of the selling firm or client bank.
- Take into account the FCA's supervision review report and guidance.

- Hold adequate financial resources at all times. Where acquisitions are funded by debt, the CEO should have a credible plan to service the debt. This should be supported by realistic and stress-tested financial projections. Where the CEO are an investment firm group, the CEO must fully comply with the prudential consolidation rules.

The FCA will review consolidation in the market, assessing the suitability and financial soundness of acquisitions. Unauthorized acquisitions may face enforcement actions. Other FCA areas of focus include oversight of appointed representatives, disclosure for Consumer Composite Investments, and ESG-related requirements, including sustainability disclosures.

CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

UK Government publishes Consultation on draft CASP (Due Diligence and Reporting Requirements) Regulations 2025

On 30 October 2024, the UK Government published a Consultation on the draft Cryptoasset Service Providers (Due Diligence and Reporting Requirements) Regulations 2025.

The draft regulations set out further details of:

- reporting and due diligence requirements for reportable cryptoasset service providers (RCASPs) to comply with the Cryptoasset Reporting Framework (CARF),
- penalties for failing to comply with the regulations and appeals process,
- the requirement for cryptoasset users to provide a valid self-certification,
- penalties for failure to provide a valid self-certification.

The consultation lasts until 10 January 2025. The final regulations are expected to be made in 2025 to come into force on 1 January 2026.

In addition, the UK Government published a Consultation outcome for the CARF and Common Reporting Standard (CRS). The government ran a consultation between 6 March 2024 to 29 May 2024. This consultation allowed CASPs, financial institutions, their advisers, and other businesses associated with the crypto industry and financial industry to engage with HMRC on the implementation of the CARF and the amendments to the CRS. This document provides a summary of the responses. It sets out the government's responses to the questions raised in the consultation and sets out the next steps on the implementation of the rules including further engagement with the industry.

FINANCIAL SUPERVISION

UK publishes Financial Services and Markets Act 2023 (Commencement No. 8) Regulations 2024

On 28 October 2024, the United Kingdom published the Financial Services and Markets Act 2023 (Commencement No. 8) Regulations 2024.

The provisions commenced under Regulation 2 and 3 came into force on 29 October 2024.

Regulations 2(a) and (d)(ii) and (iii) commence the revocation of Regulations (EU) 2018/33 and 2018/34 which lay down ITS with regard to the standardised presentation format of the statement of fees and the fee information document and their common symbol. These supplement Part 2 of, and Schedules 1 and 2 to, the Payment Accounts Regulations 2015 (S.I. 2015/2038).

Regulation 2(b) and (e) give the FCA the power to suspend waivers under Regulation (EU) No 600/2014 (MiFID).

Regulation 2(c) amends the Financial Services and Markets Act 2000 (c. 8) giving HM Treasury the power to make regulations about unauthorised co-ownership alternative investment funds.

Regulation 2(d)(i) commences the revocation of the assimilated law under which the LIBOR is recognised as a critical benchmark for the purposes of Regulation (EU) 2016/1011. All LIBOR settings have ceased to be published; commencing this Regulation removes LIBOR as a critical benchmark.

Regulations 3(a) and (b) amend Regulation (EU) No 600/2014 (MiFID) and give the FCA the power to make rules relating to pre- and post-trade transparency requirements for fixed income instruments and derivatives?and systematic internalisers.

Regulations 3(a) and (c) amend the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/701) and give the FCA the power to make rules relating to position limits and position managements.

The provisions commenced under Regulation 3 come into force for all remaining purposes under:

- Regulation 4 on 1 December 2024,
- Regulation 5(b) and (d) on 31 December 2024,
- Regulation 6(a) and (b)(ii) on 31 March 2025,
- Regulation 7 on 30 June 2025,
- Regulation 8 on 1 December 2025, and
- Regulation 9(a) and (b)(i), (ii) and (iv) on 6 July 2026.

Regulations 5(a) and (c) commence on 31 December 2024 the revocation of the assimilated EU tertiary legislation listed in the Schedule. This legislation includes decisions recognising that foreign regimes, including solvency regimes and supervisory regimes for insurance and reinsurance undertakings and approved exchanges and recognised market operators, are equivalent to the UK's systems and frameworks. These decisions will be restated on the day on which the revocation of the decisions comes into effect.

Regulations 6(a) and (b)(i) commence on 31 March 2025 amendments to Regulation (EU) No 600/2014 (MiFID) to remove the requirements for trading venues, approved publication arrangements and consolidated tape providers to provide information for determining whether an investment firm is a systematic internaliser.

Regulation 9(a) and (b)(iii) and (iv) commence on 6 July 2026 the replacement of the FCA's duty to impose position limits in respect of specified commodity derivatives with a power to do the same.

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

UK publishes draft CIS (Temporary Recognition) and CCP (Transitional Provision) (Amendment) Regulations 2024

On 16 October 2024, the United Kingdom published draft Collective Investment Schemes (Temporary Recognition) and Central Counterparties (Transitional Provision) (Amendment) Regulations 2024 following the UK's exit from the EU.

Key changes include:

- A definition for money market funds (MMFs) is introduced affecting other amendments.
- Temporary recognition for funds under the CIS EU Exit Regulations is updated, allowing the FCA to direct funds to apply for recognition under an additional section (271A) of the FSMA 2000.
- The temporary recognition period for funds is extended from five to six years.
- Conditions for temporarily recognising new sub-funds are amended, distinguishing between MMFs and non-MMFs, with adjustments depending on FCA directions.
- In the CCP regulations, one of the conditions under which a central counterparty could lose recognition is removed, aligning with post-Brexit regulatory changes.

PACKAGED RETAIL AND INSURANCE-BASED INVESTMENT PRODUCTS (PRIIPS)

UK publishes draft Consumer Composite Investments (Designated Activities) Regulations 2024

On 10 October 2024, the United Kingdom published a draft Consumer Composite Investments (Designated Activities) Regulations 2024.

These regulations replace previous laws related to PRIIPs that were revoked by the Financial Services and Markets Act 2023, i.e. the 2017 PPRIIPs Regulations, Regulation (EU) No 1286/2014 concerning KIDs for PRIIPs, Commission Delegated Regulation (EU) 2016/1904 regarding product intervention, and Commission Delegated Regulation (EU) 2017/653 setting RTS for the content and presentation of PRIIPs' KIDs.

The new regulations define consumer composite investments (CCIs), which are investments or insurance contracts whose value depends on the performance of certain assets. They designate activities related to manufacturing, advising, and selling CCIs to retail investors in the UK. The FCA is given the power to establish rules, including temporary ones, for CCI activities.

Additionally, the regulations remove exemptions for those advising on or selling PRIIPs from certain financial promotion restrictions and make adjustments to accommodate the transition from PRIIPs to CCIs.

UK publishes draft PRIIPs (Retail Disclosure) (Amendment) Regulations 2024

On 7 October 2024, the United Kingdom published a draft Packaged Retail and Insurance-based Investment Products (Retail Disclosure) (Amendment) Regulations 2024.

It which introduces transitional amendments to existing legislation repealed by the Financial Services and Markets Act 2023. These amendments relate specifically to PRIIPs and adjust the following articles:

- Article 2 of Regulation (EU) No 1286/2014 (PRIIPs Regulation) which defines which products fall under the scope of the Regulation and specifies exclusions.
- Articles 2, 50, and 51 of Commission Delegated Regulation (EU) 2017/565 which supplements MiFID II and cover definitions, cost information, and the disclosure requirements for funds or PRIIPs.

Regulation 2 adds UK-listed closed-ended investment companies to the list of products excluded from the PRIIPs Regulation. These companies, structured as public limited companies, invest pooled funds in various assets to manage investment risk and generate profits for their shareholders. A UK-listed closed-ended investment company is one whose shares are traded on a UK-regulated market or UK multilateral trading facility. As a result of this amendment, UK-listed closed-ended investment companies are no longer required to produce the KID mandated by the PRIIPs Regulation. This change is significant for manufacturers, advisors, and sellers of shares in these companies, as they will no longer have to comply with the KID disclosure requirements under PRIIPs.

Regulation 3 amends Commission Delegated Regulation (EU) 2017/565 by inserting the definition of a "UK-listed closed-ended investment company." It also excludes the costs related to such companies from the requirement to disclose aggregated costs to clients and other detailed cost and charge information. Specifically, firms will no longer need to include manufacturing or management costs of shares in UK-listed closed-ended investment companies when providing cost disclosures. This amendment effectively relieves firms from the obligation to report or aggregate these costs in their communications with clients.

SECURITISATION REGULATION

UK publishes draft Securitisation (Amendment) (No. 2) Regulations 2024

On 7 October 2024, the United Kingdom published draft Securitisation (Amendment) (No. 2) Regulations 2024.

Regulation 12(3) of the Securitisation Regulations 2024 (S.I. 2024/102) (Securitisation Regulations) defines a qualifying EU securitisation which may use the STS (simple, transparent and standardised) designation in the UK. Regulation 12(3)(b) requires applicable securitisations to be notified to ESMA before the relevant time, stated in regulation 12(5) to be 11 p.m. on 31 December 2024.

These Regulations amend Regulation 12(5) to extend this deadline to 11 p.m. on 30 June 2026.

FCA updates page on securitisation rules

On 31 October 2024, the Financial Conduct Authority (FCA) updated its page on securitisation.

The update relates to the new information being added relating to the new rules that are to be implemented on 1 November 2024.

The FCA consulted on and made rules for the UK securitisation market:

- 7 August 2023 – Consultation Paper (CP23/17)
- 30 April 2024 – Policy Statement (PS24/4)

The FCA rules are to be read in parallel to the PRA rules published also on 30 April 2024.

As of 1 November 2024, the new rules came into force and can be found in the Securitisation Sourcebook (SECN), within the specialist sourcebook section of the FCA Handbook. All previous Technical Standards and Annexes related to the UK Securitisation Regulation are set out, to the extent retained, in SECN as rule requirements.

INTERNATIONAL

DERIVATIVE FINANCIAL INSTRUMENTS (DERIVATIVES)

ISDA updates OTC derivatives compliance calendar

On 31 October 2024, the International Swaps and Derivatives Association (ISDA) updated its OTC derivatives compliance calendar.

The update relates to the global calendar of compliance deadlines and regulatory dates for the OTC derivatives space.

INTERNATIONAL FINANCIAL REPORTING STANDARDS (IFRS)

IASB publishes call for investors and stakeholders to help shape project on accounting requirements for intangibles

On 31 October 2024, the International Accounting Standards Board (IASB) published a call for investors and other stakeholders to help shape the IASB's project on accounting requirements for intangibles.

The IASB is asking investors, companies and other stakeholders to take part in its short survey on the accounting requirements for reporting on intangibles in company financial statements. This survey is part of the project the IASB launched earlier this year to comprehensively review the accounting requirements for intangibles. This project aims to assess whether the requirements in IAS 38 Intangible Assets remain relevant and continue to reflect current business models, or whether the IASB should improve the requirements.

The survey will help the IASB to determine:

- the problem that the IASB needs to solve;
- the scope of the project; and
- how the IASB should best stage the work to deliver timely improvements.

The survey is open until 30 November 2024. The survey results will be discussed at an IASB meeting in early 2025.

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