

8 June 2023

## Update on EU Developments and Publications Relevant to the Asset Management Sector

### 1. Introduction

The purpose of this Circular is to bring to the attention of the asset management industry a number of important publications issued by the European Commission and the European Supervisory Authorities (ESAs) from 1 January to 31 May 2023. The Authority aims to publish a similar communication bi-annually. By compiling and disseminating this information, the Circular aims to promote transparency and enhance awareness within the industry regarding the latest regulatory developments.

It is important to note that this Circular does not aim to provide an exhaustive list of all publications. It specifically focuses on key developments such as (i) legislative proposals, (ii) consultations, to which the industry is invited to contribute, (iii) updates to question and answer (Q&A) documents and other convergence measures, and (iv) feedback reports by the ESAs to Commission mandates e.g. draft RTSs.

Through this update, industry stakeholders are apprised of significant developments and have opportunities to actively engage and contribute to the regulatory process by providing feedback to the Commission and/or the ESAs as applicable.

### 2. European Commission

- **EU Retail Investment Package (4 May)**

The European Commission published its retail investment package consisting of [a proposed omnibus Directive](#) amending the UCITS Directive, the AIFMD, MiFID II, the IDD, and Solvency II and a [proposed amending Regulation](#) which revises the PRIIPs Regulation. The proposals are part of the Capital Markets Union action plan and will progress through the EU legislative process and, as currently drafted, have an 18 month transition period.

The purpose of the package is to tackle perceived deficiencies within the existing EU regulatory structure for retail investment. Specifically, it aims to alleviate the challenges faced by retail investors in obtaining pertinent, comparable, and comprehensible information necessary for making informed investment decisions.

It covers disclosures, value for money assessments, competence assessments for advisors, marketing communications, advisory/non-advisory processes, inducements, quality of advice, and client classification requirements. The Authority will be analysing this proposal in further detail and provide its feedback and positions. Further updates on this package will be communicated in due course.

### 3. ESMA

- **Opinion on Legislative Amendments to Prevent Undue Costs in Funds (17 May)**

ESMA has published an [Opinion](#) to the European Commission with suggested clarifications of the legislative provisions under the UCITS Directive and the AIFMD relating to the notion of “undue costs”.

This initiative was triggered by one of the findings from the ESMA 2021 Common Supervisory Action on costs and fees, which revealed divergent market practices regarding the classification of costs as “due” or “undue” in funds. Aside from the significant importance of protecting investors, ESMA believes that a lack of supervisory convergence on this matter creates opportunities for regulatory arbitrage and poses risks to competition in the EU market.

ESMA's proposal is to use the supervisory expectations outlined in the 2020 supervisory briefing on cost supervision as a foundation and translate these expectations into clearer legal requirements. This would enable National Competent Authorities (NCAs) to build upon existing supervisory efforts and ensure an even higher level of investor protection by establishing stronger legal provisions within the UCITS and AIFMD frameworks.

- **Consultation Paper on Rules for Long Term Investment Funds (23 May)**

ESMA is consulting on [draft regulatory technical standards \(RTS\)](#) under the revised ELTIF Regulation. Interested stakeholders are invited to provide input by 24 August 2023.

The RTS will specify the way the new requirements of the revised ELTIF regulation, in particular on the redemption policy and matching mechanism, will apply.

ESMA will consider the feedback it receives to this consultation later in 2023 and expects to publish a final report and submit the draft technical standards to the European Commission for endorsement by 10 January 2024.

- **Final Report on the 2022 CSA on Valuation (24 May)**

This [report](#) sets out ESMA's analysis and conclusions on the Common Supervisory Action (CSA) exercise carried out with National Competent Authorities on the supervision of the asset valuation rules under the UCITS and AIFM Directives. It presents ESMA's views on the findings and concludes with the follow-up actions envisaged by NCAs.

The CSA's aim was to assess, foster and enforce the compliance of supervised entities with the organisational requirements with respect to asset valuation, as well as adherence to valuation principles and methodologies with a view to reflecting a true and fair value of their financial positions both under normal and stressed market conditions in line with the applicable rules.

The industry is also encouraged to read the [circular](#) issued by the MFSA on 24 March 2023.

- **Updates to Q&As on the Application of the UCITS and AIFM Directive (26 May), and the EUSEF/EUVECA Regulations (10 Mar)**

ESMA updated its [Q&As on the application of the AIFMD](#) with a section on marketing and a new Q&A on whether non-EU AIFMs are allowed to carry out pre-marketing activities pursuant to Article 30a of the AIFMD.

ESMA also updated its [Q&As on the application of the UCITS Directive](#) with a clarification on the applicability of the 40% limit set out in Article 52(2) of the UCITS Directive and the [Q&As on the application of the EuSEF and EuVECA Regulations](#) with a clarification in investments in other funds not yet registered as EuSEF or EuVECA that materially comply with the criteria of the definition of qualifying venture capital or social entrepreneurship fund.

- **ESMA Progress Report on Greenwashing (31 May)**

ESMA (along with EBA and EIOPA) released their [progress reports](#) on the issue of greenwashing in the financial industry. These reports present a shared, overarching understanding of greenwashing that applies to market participants in banking, insurance, pensions, and financial markets, within the respective jurisdictions of the ESAs. The reports were prepared in response to a request from the European Commission, which sought input from the ESAs regarding greenwashing.

The ESMA report presents findings and observations on key areas of risk, the factors contributing to greenwashing, and initial actions for remediation. It serves as a foundation for addressing greenwashing risks in the future, encompassing the entire value chain and focusing on important sectors falling under ESMA's jurisdiction.

The final greenwashing reports, to be published in May 2024, will include comprehensive recommendations, potentially suggesting changes to the regulatory framework in the European Union.

#### 4. EBA

- **Draft Regulatory Technical Standards on the Scope and Methods of Consolidation of an Investment Firm Group under Article 7(5) of Regulation (EU) 2019/2033 (12 May)**

These [draft RTS](#) are mandated by Article 7(5) of the Investment Firms Regulation.

This final report proposes proportionate and consistent prudential requirements for consolidation of investment firms. It explains the policy choices of regulatory requirements for draft RTS and outlines their legislative basis. The EBA is of the view that proposed regulatory requirements ensure a proportionate and technically consistent prudential framework for investment firms.

Four key aspects of consolidation are covered in these draft RTS: the scope of consolidation; the methods of consolidation; the methodology for the prudential consolidation; and the rules applicable for minority interest and additional Tier 1 and Tier 2 instruments issued by subsidiaries in the context of prudential consolidation.

Only two consolidation options are available for investment firms, full consolidation and the aggregation method.

The draft regulatory technical standards will be submitted to the Commission for endorsement before being published in the Official Journal of the European Union. The technical standards will apply 20 days after the entry into force.

## 5. Joint ESA Publications

- **Consolidated Questions and Answers (Q&A) on the PRIIPs Key Information Document (KID) (17 May)**

This [Q&A](#) combines responses from the European Commission and the ESAs regarding the interpretation and practical application of the PRIIPs Regulation and its Delegated Acts. This consolidated document combines responses given by the European Commission to questions requiring the interpretation of Union Law and responses generated by the ESAs relating to the practical application or implementation of the PRIIPs Regulation and its Delegated Acts. This document includes Q&As related to the amendments introduced by Commission Delegated Regulation (EU) 2021/2268, with specific indications for those Q&As. Revised or deleted Q&As are indicated in the document.

- **Consolidated Q&A SFDR (17 May)**

The ESAs published a [consolidated Q&A](#) on SFDR Level 1 and SFDR Level 2 (together SFDR).

The consolidated Q&As do not add new guidance but combines responses given by the European Commission to questions requiring interpretation of Union Law, which are colour coded in blue, and responses generated by the ESAs relating to the practical application or implementation of SFDR, which are not colour coded.

This publication helps in navigating the clarifications provided in the numerous Q&As that have issued.

## 6. Conclusion

Licence Holders are encouraged to familiarise themselves with the recent developments outlined above. In case of queries on the contents of this circular, please contact the Investment Services Supervision Function on [isspolicy@mfsa.mt](mailto:isspolicy@mfsa.mt).