

21 December 2023

Update on EU Developments and Publications Relevant to the Investment Services 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 June to 20 December 2023 following the [previous circular](#). 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, such as, draft Regulatory Technical Standards (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. Council of the European Union

- **Final compromise text of AIFMD II (6 November)**

On 6 November 2023, the Council of the European Union published the [final compromise text](#) with regards to the review of the Alternative Investment Fund Managers Directive, known as AIFMD II.

The review seeks to introduce a new regime for loan origination and new liquidity management tools, as well as increased transparency and organisational requirements and substance. The review also introduces a marketing ban for high-risk non-EU countries. Additionally, the AIFMD II relaxes the requirement for the depositary to be established in the same Member State as an EU AIF, allowing AIFMs more flexibility in terms of depositary service providers.

3. ESMA

- **ESMA finalises technical standards under the revised ELTIF regulation (19 December)**

Following a public consultation, ESMA has published the [final report](#) setting out the draft RTS for the ELTIF regulation. These RTS cover the circumstances in which the life of an ELTIF is considered compatible with the life cycles of each of the individual assets, as well as different features of the redemption policy of the ELTIF, the circumstances for the use of the matching mechanism and the costs disclosure.

The report delineates the specific rules that are to be applied providing a detailed framework for aspects such as minimum holding period and maximum redemption frequency, choice of liquidity management tools, notice period and maximum percentage of liquid assets that can be redeemed.

- **Register of authorised European long-term investment funds (ELTIFs) (11 December)**

ESMA has published an ELTIF [Register](#) containing, inter alia, the name of the Competent Authority, the name of the Manager, the ELTIF, the Home Member State, and state where the ELTIF is marketed.

- **“Do No Significant Harm” definitions and criteria across the EU Sustainable Finance framework (22 November)**

Concepts of sustainable investments and environmentally sustainable activities in the EU Sustainable Finance framework (22 November)

Concept of estimates across the EU Sustainable Finance framework (22 November)

The purpose of this [document](#) is to explain the Do No Significant Harm principle that is present in several pieces of European Legislation dealing with Sustainable Finance. The principle is a key element in the Taxonomy Regulation, Sustainable Finance Disclosure Regulation, and the Benchmark Regulation.

The purpose of this [document](#) is to explain how the concept of sustainability is present in the EU Sustainable Finance framework. This concept is reflected in the definition of sustainable investments in the Sustainable Finance Disclosure Regulation and the definition of environmentally sustainable economic activities introduced in the Taxonomy Regulation.

The purpose of this [document](#) is to explain how key Sustainable Finance EU legislation deal with the use of “estimates” and “equivalent information” and the conditions under which these are allowed as sources of data to prepare mandatory ESG metrics for the compliance of regulated entities with their obligations.

These documents are intended as an aide to stakeholders to navigate the key elements concerning estimates and equivalent information under the various legislation. It is a factual presentation of the relevant legal provisions in EU Directives, Regulations and Commission Delegated Regulations and the relevant guidance provided by the European Commission and the European Supervisory Authorities.

- **2024 Annual Work Programme (28 September)**

ESMA has published its [2024 Work Programme](#).

- **Final Report Review of the technical standards under Article 34 of MiFID II (11 July 2023)**

Article 34 of MiFID II requires ESMA to develop draft regulatory (RTS) and implementing technical standards (ITS) to specify the information to be notified by, inter alia, investment firms wishing to provide cross-border services without the establishment of a branch and establish standard forms, templates and procedures for the transmission of information in this respect.

This [Final Report](#) contains such draft technical standards

- **Q&A on the application of the UCITS Directive (14 June)**

The purpose of this [Q&A](#) is to promote common supervisory approaches and practices in the application of the UCITS Directive and its implementing measures. It does this by providing responses to questions posed by the general public and competent authorities in relation to the practical application of the UCITS framework.

- **Q&A on the Application of the AIFMD (14 June)**

The purpose of this [Q&A](#) is to promote common supervisory approaches and practices in the application of the AIFMD and its implementing measures. It does this by providing responses to questions posed by the general public and competent authorities in relation to the practical application of the AIFMD.

4. Joint ESA Publications

- **ESAs put forward amendments to sustainability disclosures for the financial sector (4 December)**

EBA, EIOPA, and ESMA have published a [final report](#) amending the draft Regulatory Technical Standards (RTS) to the Delegated Regulation supplementing the Sustainable Finance Disclosure Regulation.

The ESAs propose adding new social indicators and streamlining the framework for the disclosure of principal adverse impacts of investment decisions on the environment and society.

The ESAs also suggest new product disclosures regarding “greenhouse gas emissions reduction” targets.

Additionally, the ESAs propose further technical revisions to the SFDR Delegated Regulation.

- **Consolidated questions and answers (Q&A) on the PRIIPs Key Information Document (KID) (5 December)**

The ESAs, jointly, have published an [updated Q&A](#). These Q&As concern Regulation (EU) No 1286/2014 (the PRIIPs Regulation) and its Delegated Acts (the PRIIPs Delegated Regulation).

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 under Article 16b(1) of the ESA Regulations.

5. 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.