

## **1 Foreword**

The Investment Services Supervision (ISS) is the function responsible for supervising entities licensed under the [Investment Services Act](#). As part of our supervisory duties, we also ensure that our licence holders are made aware of the regulatory changes pertaining to their business.

The purpose of this briefing is to bring to the attention of the investment firms and funds sector a number of important publications issued from 1 January to 9 July 2024 following the previous [circular](#).

This briefing does not aim to provide an exhaustive list of all publications. It specifically focuses on key developments such as (i) MFSA updates, (ii) legislative proposals, (iii) consultations, to which the industry is invited to contribute, (iv) updates to question and answer (Q&A) documents and other convergence measures, and (v) 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 Updates from the MFSA Investment Services Supervision Function**

### **Circular on changes to Various Rulebooks**

On 5 February 2024 the MFSA issued a [circular](#) to communicate to the industry various amendments to the Rulebooks. 13 Rulebooks were amended in total, with changes relating to the requirements for surrendering a Scheme, the deletion of various appendices, the enhancement of our national framework in closer alignment with the EU pertaining to the IFD, BRRD, CRR II and CRD VI, and to implement the most recent MMF Stress Testing Guidelines.

### **Survey on the EU Sustainability and Reporting Regime**

On 7 February 2024 the MFSA issued a [survey](#) on the EU Sustainability and Reporting Regime. The survey was launched to assess stakeholders' experience and views in dealing with the disclosure and reporting requirements emanating from the European Union Sustainability Disclosures and Reporting regime. The feedback gathered formed part of the Stakeholder Engagement and Awareness component of the EU Technical Support Instrument (TSI) multi-country project the MFSA is participating in together with the National Competent Authorities of Croatia, Poland and Romania.

### **Amendments to the Investment Services Rulebooks in relation to the Money Market Funds Regulation**

On 28 March 2024 the MFSA issued a [circular](#) to communicate amendments that were made to the Investment Services Rulebooks to update the Rules to implement the revised ESMA Guidelines on stress test scenarios issued under the MMF Regulation.

### **Publication of the AIFMD II**

On 19 April 2024 the MFSA issued a [circular](#) to the industry to inform it of the publication of the AIFMD II and to outline the main changes being brought about by such Directive.

### **Publication of ESMA's Final Report on Guidelines on Funds' Names Using ESG or Sustainability-Related Terms**

On 18 June 2024 the MFSA issued a [circular](#) as ESMA published its final report containing guidelines for investment funds using ESG or sustainability-related terms in their names. The final report

follows the consultation launched in November 2022 and the public statement issued in December 2023. The Guidelines introduce parameters for the use of certain fund names in order to mitigate against the risk of greenwashing.

### **Circulation of Questionnaire on Crypto-Asset Services under MiCA**

The ISS has distributed a [questionnaire](#) to Licence Holders on 5 July to gather information about their plans to offer crypto-asset services under MiCA. The aim is to assess the level of interest and readiness among authorised firms to provide MiCA services. This initiative is based on Article 60 of MiCA, which outlines the crypto-asset services that certain financial entities may offer. The questionnaire seeks to gain better insight into which Licence Holders are considering these services.

## **3 Joint ESA Publications**

### **[Consolidated Q&A on the SFDR the SFDR Delegated Regulation](#)**

This Q&A issued on 12 January 2024 aims to offer clarity to the industry and competent authorities with regards to:

- The applicability of the SFDR and its Delegated Regulation;
- Definition of sustainable investment;
- Current value of all investments in PAI and Taxonomy aligned disclosure;
- Principal Adverse Impact disclosures;
- Financial product disclosures;
- Multi-option product;
- Taxonomy-aligned investment disclosures;
- Financial advisers and execution-only FMPs.

### **[Discussion Paper on the Call for advice on the investment firms prudential framework](#)**

ESMA and the EBA have issued a discussion paper on 3 June 2024 in relation to the potential review of the Investment Firms Prudential Framework. By means of this discussion paper and the subsequent call for advice, the European Commission aims to gather early stakeholder feedback on the subject matter. Investment Firms are encouraged to participate. The MFSA issued a [circular](#) in this regard.

### [Consolidated Q&A on the PRIIPs Key Information Document \(KID\)](#)

The Q&A issued on 28 June 2024 is vast in its scope, but it offers clarity on, inter alia:

- General topics;
- How a product should be classified;
- Different methodologies to calculate various components of the KID;
- Performance Scenarios.

## **4 ESMA Publications**

### [Guidelines on stress test scenarios under the MMF Regulation](#)

The purpose of these guidelines, dated 6 March 2024, is to ensure common, uniform and consistent application of the provisions in Article 28 of the MMF Regulation. In particular, and as specified in Article 28(7) of the MMF Regulation, they establish common reference parameters of the stress test scenarios to be included in the stress tests. As outlined above, the MFSA amended its rulebooks and issued a circular in this regard.

### [Call for Evidence On the review of the UCITS Eligible Assets Directive](#)

The UCITS Eligible Assets Directive, sets out the types of assets that can be held by Undertakings for Collective Investment in Transferable Securities (UCITS) funds, and is currently under review. ESMA has launched this Call for Evidence dated 7 May 2024 to gather feedback from industry stakeholders on potential updates and improvements to the directive, since it was adopted in 2007.

ESMA is looking to gather input and insights from stakeholders on the clarity of fundamental principles within the UCITS Eligible Assets Directive. This involves identifying potential discrepancies in interpretation and alignment issues within the Directive. ESMA's request for feedback includes several inquiries aimed at understanding stakeholders' practical experience

**The MFSA issued a [circular](#) on 17 May 2024 in this regard and encourages the industry to participate in this important call, which may have a material impact on the future direction of UCITS.**

## [Final Report on the Guidelines on funds' names using ESG or sustainability-related terms](#)

The purpose of the Guidelines, published on 14 May 2024, is to specify the circumstances where the fund names using ESG or sustainability-related terms are unfair, unclear or misleading. Fund managers and internally managed funds that include ESG or sustainability-related terms in the names of the funds they manage must comply with the requirements included in the Guidelines. As outlined above, the MFSA issued a circular in this regard.

## [Question and Answers](#)

ESMA has issued a number of Questions and Answers on 18 June 2024 in relation to:

- [Derogation for newly authorized UCITS](#)

ESMA has clarified that the six-month derogation period applies from the date of authorisation of the UCITS, regardless of whether the UCITS launches immediately after authorisation or at a later stage.

- [Notification upon establishment of a branch](#)

The AIFMD requires an EU-authorized AIFM to notify the competent authorities of its home Member State when it intends, either directly or by establishing a branch, to manage EU AIFs established in another Member State.

- [Initial capital and additional own funds](#)

Internally managed AIFs and self-managed UCITS investment companies shall adopt procedures and systems to ensure compliance at all times with the requirements related to own funds under the UCITS and AIFM Directives.

## [ESMA consultation on Liquidity Management Tools \(LMTs\) for funds](#)

ESMA is seeking input on draft guidelines and technical standards under the revised Alternative Investment Fund Managers Directive (AIFMD) and the Undertakings for Collective Investment in

Transferable Securities (UCITS) Directive. These draft measures are designed to promote convergent application of the manner in which managers should select and calibrate LMTs, in light of their investment strategy, their liquidity profile and the redemption policy of the fund. Additionally, they intend to clarify the functioning of specific LMTs, such as the use of side pockets, a practice that currently varies significantly across the EU.

ESMA welcomes responses to the consultations by 8 October. Following this, ESMA will deliver the final RTS and guidelines by 16 April 2025.

## **5 EBA Publications**

### **[Guidelines on the application of the group capital test for investment firm groups in accordance with Article 8 of IFR](#)**

By way of derogation from Article 7 of Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 (“IFR”) in relation to Prudential Consolidation, and as set out in Article 8 of the same Regulation, the group capital test may be opted for by certain investment firms. By means of the Guidelines of 11/04/2024, the EBA has identified criteria that are both qualitative and quantitative in nature, by which investment firms may be assessed upon when requesting such derogation. The MFSA has issued a [circular](#) in relation to these guidelines.

## **6 Commission Publications**

### **[Targeted consultation assessing the adequacy of macroprudential policies for non-bank financial intermediation \(NBFi\)](#)**

This targeted consultation, initiated by the European Commission on 22 May 2024, aims to assess the adequacy of macroprudential policies for non-bank financial intermediation (NBFi) in the European Union. Its primary purpose is to gather insights and opinions from a wide range of stakeholders, including financial institutions, supervisory authorities, and academics, on the current state and potential improvements of the macroprudential framework for the NBFi sector. The consultation seeks to identify potential systemic risks, evaluate existing policy tools, and explore new approaches to enhance financial stability. By engaging with various experts and market participants, the Commission aims to inform future policy decisions and ensure a robust, resilient, and well-regulated non-bank financial sector within the EU.

## 7 Other Publications

### [AIFMDII](#)

On 26 March 2024, Directive 2024/927/EU ('the Directive') was published in the EU's Official Journal and entered into force on 15 April 2024. The Directive makes amendments to the AIFMD (Directive 2011/61/EU) and, to a relevant extent, the UCITSD (Directive 2009/65/EU). This legislative update brings forth several changes that warrant attention from stakeholders in the financial services industry, particularly funds, fund managers, depositaries, and fund administrators. The MFSA has issued a circular in relation to this, as outlined above.

### [CRRIII/CRD VI](#)

The [Capital Requirements Regulation III](#) and the [Capital Requirements Directive VI](#), applicable to credit institutions, and Class 1 and Class 1 Minus investment Firms, have just been published. The general rule is that the former shall apply from 1 January 2025, whereas the latter from 11 January 2026.

*Any information provided in this briefing and any other guidance provided from time to time by Investment Services Supervision is not to be construed as legal advice. Licence holders should refer to their MFSA-approved Compliance Officer and/or any legal advisors for any technical guidance in relation to their regulatory compliance obligations.*