

AWM Regulatory Update Q3 2024

October 2024



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€4.48tn

Total domiciled funds in Ireland – Q2 2024



€3.58tn

Net assets of UCITS in Ireland – Q2 2024



€906bn

Net assets of AIFs in Ireland – Q2 2024



€91.3bn

Net sales of Irish domiciled funds in Q2 2024



79.7%

Percentage of Irish domiciled assets in UCITS Funds – Q2 2024



8,881

Number of funds domiciled in Ireland – Q2 2024



73%

Ireland's share of European ETFs market – Q2 2024



€49.8bn

Ireland's net ETF sales – Q2 2024



40%

Ireland's share of European Money Market Funds – Q2 2024



Source: EFAMA Quarter 2, 2024 statistical release issued in September, 2024



ESAs Consolidated SFDR Q&A

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On 25 July, the [ESAs issued an updated Consolidated Q&A on SFDR](#). This new version of the Q&A contains new answers by the ESAs.

The following are the key points stemming from the updated Q&A:

Scope

- Registered AIFMs should make available on their websites the information pertaining to the Article 10 disclosures of SFDR.
- Disclosures under SFDR cannot override behavioural obligations in other EU legislation.

PAI Disclosures

- Therefore, Principal Adverse Impacts (“PAI”) indicator 4 (exposure to companies active in the fossil fuel sector) should be calculated on a pass/fail basis, and aggregated investments in all companies active in the fossil fuel sector must be disclosed under PAI indicator 4.
- PAI indicator 6 related to energy consumption intensity per high impact climate sector, requires separate disclosures for each high impact climate sector.
- PAI indicator 1 on GHG emissions is calculated from the underlying investee companies, irrespective of whether the investment in them is direct or indirect.
- To convert values from other currencies to EUR, the ESAs specify that financial market participants must use the exchange rate at the fiscal year-end for both the quarterly calculations and the enterprise valuation at the fiscal year-end.

Financial Product Disclosures

- The methodology for calculating the share of sustainable investments under the EU Taxonomy is detailed in Articles 15 and 17 of the SFDR Delegated Regulation. For general financing instruments, the contribution to taxonomy-aligned investments is based on turnover, CapEx, or OpEx, as chosen for Annex II-III disclosures. Periodic disclosures in Annexes IV and V require reporting the proportion of Taxonomy-aligned investments by turnover, CapEx, and OpEx.
- The calculations of sustainable investment can be done either at the economic activity or the investment level.
- Where a sustainable investment is an investment in another financial product, such as a UCITS fund, the financial market participant should look through the underlying investments of that financial product to ensure that the investment qualifies as a sustainable investment.
- Regarding whether efficient portfolio management techniques can be considered “investments for certain specific purposes such as hedging or liquidity”, they can only fall within the “remaining portion” if used for hedging or liquidity purposes, not when used for any other purpose.
- Regarding whether money market funds can be considered as “investments for certain specific purposes such as hedging or liquidity”, they should not automatically be considered as liquidity in Article 9 financial products. Whether such an investment can be considered as part of the “investments for certain purposes such as hedging or liquidity” for Article 9 financial product depends on the type of money market fund invested in, meaning on whether the MMF qualifies as cash equivalent under IFRS accounting rules.
- Special purposes vehicles or holding companies whose purpose is to hold real assets like cars or real estate, would be considered investee companies for which good governance checks would not have to be made.



ESMA guidelines for the use of ESG and sustainability terms in fund names

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On 21/08/2024 ESMA published the [Guidelines on funds' names using ESG or sustainability-related terms](#) on its website in all the official EU languages. The Guidelines will start applying three months after this publication, i.e. on 21 November 2024.

The Guidelines establish that to be able to use sustainability, transition, social and governance related terms in fund names, **a minimum threshold of 80% of investments should be used to meet environmental, social characteristics or sustainable investment objectives.**

The Guidelines also apply exclusion criteria for different terms used in fund names:

- “Environmental”, “Impact” and “sustainability”-related terms: exclusions according to the rules applicable to Paris-aligned Benchmarks (PAB); and
- “Transition”, “Social” and “Governance”-related terms: exclusions according to the rules applicable to Climate Transition Benchmarks (CTB).

In cases of a combination of terms, use of transition, sustainability- and impact-related terms, and for funds designating an index as a reference benchmark, further criteria are specified in the Guidelines.

Next steps

The transitional period for funds existing before the application date will be six months after that date. Any new funds created after the application date should apply these Guidelines immediately in respect of those funds.





ESMA Final Report: Guidelines on Enforcement of Sustainability Information (GLES I)

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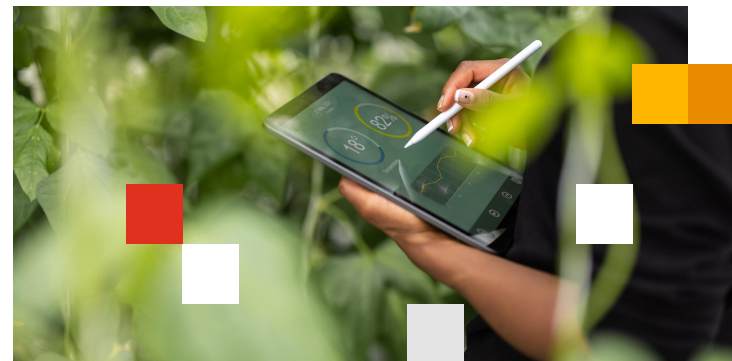
On 5 July, ESMA published its Final Report: Guidelines for Enforcement of Sustainability Information. The guidelines aim to support the consistent application and supervision of sustainability reporting requirements by National Competent Authorities (“NCAs”) throughout the EU.

The following are the key points from the guidelines:

- Applying the Standards should consider proportionality.
- NCAs may face resource limitations that hinder full compliance in the initial reporting cycle.
- ESMA states that the consolidation exemption does not apply to non-listed parents, as NCAs’ roles are tied to securities markets.
- Enforcement action selection is based on financial and impact materiality, sector nature, and geography.
- The role of auditors and/or assurers during the examination process is clarified, especially during pre-clearance.
- NCAs are encouraged to provide annual reports on their enforcement actions.
- ESMA confirms no immediate need to incorporate a review process into the GLESI, as it could create market uncertainty.

Next steps

ESMA will continue to monitor sustainability reporting practices in 2025, in addition to the application of the GLESI. The GLESI will also be disclosed in all EU languages. In addition, ESMA will release in Q4 recommendations in relation to the sustainability statements of listed companies.





European Commission adopts ELTIF 2.0 level 2 RTS

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The European Commission adopted the Commission Delegated Regulation supplementing the ELTIF Regulation (ELTIF RTS) on 19 July 2024. The initial draft from ESMA (December 2023) was rejected. The revised text submitted in April was further amended by the Commission. The RTS now enters a 3-month scrutiny period by the European Parliament and Council before it can take effect.

Key takeaways

- Financial derivative instruments should only be used to hedge risks that are inherent to other ELTIF investments.
- How the lifespan of each of the individual assets of the ELTIF must align with the ELTIF's lifespan.
- Minimum holding period is optional. Criteria are included in the RTS that can be used to determine the minimum holding period, if an ELTIF elects to have a minimum holding period.
- Where the ELTIF allows for redemptions to occur during the life cycle, the manager of the ELTIF must provide the competent authority with information covered in article 4.
- Secondary market transfers are to occur on a pro-rata basis.
- An anti-dilution LMT, from the following list, may be implemented by the ELTIF manager (but not required to implement).
- No mandated minimum notice period for redemptions.
- Managers have flexibility (two options) for calibrating maximum redemption sizes.
- ELTIFs operating redemptions under Annex I do not need to maintain a minimum bucket of UCITS eligible assets at all times.





European Commission adopts ELTIF 2.0 level 2 RTS (continued)

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Annex 1: Annex 1 looks at the determination of the maximum percentage as a function of the redemption frequency and the ELTIFs notice period.(Baseline option).

Notice Period / Redemption frequency	No Notice Period	2 weeks Notice Period	1 month Notice Period	3 month Notice Period	6 month Notice Period	9 month Notice Period	12 month Notice Period
12 months	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
6 months	50.0%	52.5%	54.5%	66.7%	100.0%	100.0%	100.0%
3 months	25.0%	26.1%	27.3%	33.3%	50.0%	100.0%	100.0%
2 month	16.7%	17.4%	18.2%	22.2%	33.3%	66.7%	100.0%
1 month	8.3%	8.7%	9.1%	11.1%	16.7%	33.3%	100.0%
Bi-weekly	4.2%	4.3%	4.5%	5.6%	8.3%	16.7%	100.0%
Weekly	1.9%	2.0%	2.1%	2.6%	3.8%	7.7%	100.0%

Annex 2: Annex 2 looks at the redemption frequency and the minimum percentage of assets that were indicated within article 9(1) point (b) and the maximum percentage that were indicated in article 18(2), first sub-paragraph, point (d).

Redemption frequency	Minimum % of assets referred to in Article 9(1), point (b)	Maximum percentage referred to in Article 18(2), first sub-paragraph, point (d)
12 months, and less frequent	10%	100%
6 months	15%	67%
3 months	20%	50%
1 month or more frequent	25%	20% applied on a monthly aggregate basis



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In July, the ESMA, began the process of seeking input on draft guidelines and technical standards under the revised AIFMD and the UCITS Directive. ESMA must develop guidelines on the selection and calibration of Liquidity Management Tools (“LMTs”) for UCITS and AIFMs of open-ended AIFs by 16th of April, 2025. These guidelines will:

- Recognise that liquidity risk management is primarily the responsibility of UCITS and AIFMs.
- Include indications for activating side pockets.
- Allow adequate adaptation time, especially for existing UCITS and AIFs.

ESMA will also develop Regulatory Technical Standards (“RTS”) to specify the characteristics of LMTs under the AIFMD and UCITS Directive, to be read in conjunction with the guidelines.

Scope of Guidelines

- The guidelines will cover the selection, calibration, activation, and deactivation of LMTs.
- They will include indications on when side pockets can be activated and allow adequate time for adaptation, especially for existing UCITS and AIFs.

LMT Selection

- **Mandatory Selection:** UCITS and AIFMs must select at least two appropriate LMTs from a specified list, considering the investment strategy, liquidity profile, and redemption policy of the fund.
- **Exceptions:** Money Market Funds (MMFs) may select only one LMT.
- **Activation in Exceptional Circumstances:** Suspensions and side pockets can be activated without pre-selection in exceptional circumstances.

Calibration and Activation

- **No Limitations:** The guidelines will cover the calibration of all LMTs listed in the directives, including suspensions and side pockets.
- **Minimum Expectations:** ESMA will set minimum expectations and examples for activating all LMTs.

Anti-Dilution Tools (ADT)

- **Redemption Fee:** Applicable to funds with fixed or foreseeable transaction costs.
- **Swing Pricing:** Suitable for funds with actively traded underlying assets.
- **Dual Pricing:** Appropriate for funds with liquidity costs primarily comprised of the bid-ask spread.
- **Anti-Dilution Levy (ADL):** Useful for funds with high investor concentration or significant subscription/redemption activity.



Guidelines on LMTs of UCITS and open-ended AIFs (continued)

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Quantitative-based LMTs

- Suspension of Subscriptions, Repurchases, and Redemptions: Should be activated only in exceptional circumstances and be temporary.
- Redemption Gates: Should be considered for all funds, especially those with concentrated investor bases or less liquid assets.
- Extension of Notice Periods: Recommended for funds whose liquidity can deteriorate quickly in times of stress.
- Redemptions in Kind: Should be used for professional investors and activated on NAV calculation dates.

LMTs are categorized into Anti-Dilution Tools (ADT) and quantitative-based LMTs.

Types of LMT	LMT
Anti-Dilution Tools (ADT)	redemption fees, swing pricing, dual pricing, and Anti-Dilution Levies (ADL)
Quantitative LMTs	suspension of subscriptions, repurchases and redemptions, redemption gates, and extension of notice periods
Other LMTs	Redemptions in kind, side pockets

Side Pockets

- Should be activated only in exceptional circumstances, such as significant valuation uncertainty or illiquidity of specific assets.
- Requires a detailed plan and communication to investors.

General Principles

- The guidelines emphasize that LMTs should be part of a comprehensive liquidity management framework and not just a backstop for liquidity issues.
- Managers should select LMTs based on the fund's investment strategy, liquidity profile, and redemption policy.

Governance Principles

- Proper governance arrangements should be in place for the use of LMTs, including clear criteria for activation and deactivation, and oversight by the governing body.
- The LMT policy should be documented and form part of the broader liquidity risk management process.

Disclosure to Investors

- Managers should provide clear and appropriate disclosure to investors about the selection, calibration, and activation of LMTs.
- This includes pre-contractual information and periodic ex-post disclosures to help investors understand the potential cost implications and situations where they might not be able to access their capital.

The guidelines aim to establish consistent supervisory practices and ensure the uniform application of Union law. They focus on harmonizing the use of LMTs across Member States, promoting investor protection, and maintaining financial stability.



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The CBI published its [Individual Accountability Framework \(“IAF”\) - Questions from Stakeholders](#) on 1 July 2024. This document contains answers to questions about the IAF asked by industry stakeholders.

This document is broken into Questions & Answers (Q&As) in relation to: (1) The Conduct Standards and (2) The Senior Executive Accountability Regime (SEAR).

The Conduct Standards

- The CBI has confirmed that individuals in Controlled Function (CF) roles who offer services across borders under the freedom of services principle must adhere to the Conduct Standards.
- In general, individuals in group entities are not expected to significantly influence the conduct of a subsidiary or related Regulated Financial Service Provider (RFSP), and thus are not considered CF-1 role holders subject to Additional Conduct Standards. However, if they do exert significant influence on key business aspects, they will be classified as CF-1 and must comply with both Common and Additional Conduct Standards by law.
- Where CF or Pre-approved Controlled Functions (PCF) are outsourced, the firm itself is responsible for providing appropriate training. However, it is permissible that the training be facilitated by a third party.

SEAR

- The CBI does not plan to issue guidance on how Prescribed Responsibilities should be assigned to specific PCF role holders. However, there may be sectoral specific guidance that may be of relevance.
- Firms are not required to appoint a Head of Anti-Money Laundering and Counter Terrorist Financing (‘AML/CFT’) Legislation Compliance (PCF-52) in order to allocate the responsibility for managing the AML/CFT compliance function (Prescribed Responsibility (“PR”) 20), where such a PCF role is not legally required by the firm. The expectation is that PR20 should be allocated to the most senior individual, with the appropriate authority, responsible for such matters, taking into account the governance structures of the firm.
- The PR for managing the responsibility of the operation of the steering committee for regulatory matters (PR34) should be assigned to the most senior individual with the necessary authority, considering the firm’s governance structures. This responsibility pertains to specific, non-standard regulatory events and cannot be shared, except in certain scenarios outlined in the IAF Guidance.



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In September 2024, EuroNext Ireland issued [a corporate governance code](#) that is specifically designed for companies with a primary listing on Euronext Dublin. It aligns with international best practices while addressing the unique aspects of the Irish market and legal environment. The Code also considers the broader EU regulatory regime and developments in best practice.

Application

The Code will apply to Irish incorporated companies with an equity listing on Euronext Dublin. It will apply to financial years commencing on or after 1 January 2025. Companies that report on a calendar year basis will therefore be expected to comply with the new code for the year ending 31 December 2025.

Reporting requirements

- The Listing Rules of Euronext Dublin require every listed company to state clearly in its annual report how the principles of the Code have been applied.
- Companies must also report whether they have complied with all relevant provisions of the Code.
- The statement should avoid boilerplate reporting and provide meaningful descriptions of how the principles have been applied in the context of the company's specific circumstances.
- Where a company has not complied with the Code's provisions, it must report meaningfully on the nature, extent, and reasons for non-compliance.





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Topic area	Principles	Provisions
Board Leadership and Company Purpose	<ul style="list-style-type: none"> The board should ensure that the necessary resources, policies and practices are in place for the company to meet its objectives and measure performance against them. The board should establish the company's purpose, values, and strategy, ensuring alignment with its culture. Shareholders and stakeholders should be engaged with and encouraged to participate. Governance reporting should focus on board decisions and their outcomes in the context of the company's strategy and vision. 	<ul style="list-style-type: none"> In the annual report the board should describe how opportunities and risks to the future success of the company have been addressed along with the sustainability of the company's business model. Culture should be monitored and assessed against the desired culture. How the views of stakeholders and interests of the company. Have affected decision making should be described in the annual report. The board should provide means for confidentiality raising concerns. Conflicts of interest must be identified and managed. Any unresolved concerns should be recorded in board minutes.
Division of Responsibilities	<ul style="list-style-type: none"> The chair is responsible for board effectiveness and to promote openness. The board composition should include an appropriate combination of executive and non-executive directors. All directors should have sufficient time to meet their responsibilities. 	<ul style="list-style-type: none"> The chair should be an independent appointment. Each director the board deems to be an independent non-executive director (INED) must be identified in the annual report. Excluding the chair at least half of the board should be INEDs. One of those should be appointed as senior INED. Responsibilities should be clearly defined, agreed upon and made publicly available.
Composition, succession, and evaluation	<ul style="list-style-type: none"> Appointments to the board must be formal and transparent. The board must include a mix of relevant skills and experience. An annual evaluation of the boards performance and diversity should be conducted. 	<ul style="list-style-type: none"> Nomination committee appointed to lead board appointments and succession planning, it's work should be detailed in the annual report. All directors are subject to annual re-election. Chair should not remain in post beyond 9 years. The board performance should undergo rigorous review annually. Any concerns should be addressed with an action plan. A diversity and inclusion policy should be in place. Regular monitoring on the application and an annual review should be carried out. Open advertising should be used for appointments of chair and INED.



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