AWM Regulatory update Q4 2024

January 2025

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The Irish Funds industry in numbers

€4.67tn
Total domiciled funds in Ireland – Q3 2024

€3.76tn
Net assets of UCITS in Ireland – Q3 2024

€914bn
Net assets of AIFs in Ireland – Q3 2024

€133.7bn
Net sales of Irish domiciled funds in Q3 2024

80.5%
Percentage of Irish domiciled assets in UCITS Funds – Q3 2024

8,863
Number of funds domiciled in Ireland – Q3 2024

72.5%
Ireland's share of European ETFs market – Q3 2024

€51.7bn
Ireland's net ETF sales – Q3 2024

42.7%
Ireland's share of European Money Market Funds – Q3 2024

Source: EFAMA Quarter 3, 2024 statistical release issued in December, 2024

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Irish Funds Sector 2030 Review Final Report

October 2024

Relevant to All Firms

The Department of Finance published its Final Report of the Funds Sector 2030 Review (The Report).

- The Review aims to main Ireland's position as a leader in asset management and funds servicing, and by supporting both national and regional economies.
- Input was gathered from a public consultation process (June-September 2023) with 194 submissions, including 140 from individuals. The review team also engaged with over 100 firms and attended 30+ industry events.
- The Report includes 42 recommendations to address industry issues and ensure the Irish Funds industry remains competitive and resilient.

These recommendations, have been endorsed by the Government of Ireland. They are crucial for Ireland to compete in trending markets like private assets and to maintain market share in the face of competition from competitor jurisdictions.

Priority areas for supporting Irish funds markets' growth

1. **Enhancing Ireland's tax regime**
2. **Upskilling staff**
3. **Facilitation of technology innovation**
4. **Greater co-operation between the CBI, the Department of Finance and industry**
5. **Increased accessibility of data**
6. **Influencing data reporting to influence policy making**

Irish Funds Sector 2030 Review Final Report

October 2024

Relevant to All Firms

Summary of recommendations

Theme	Recommendation
Legal structures and products: opportunities to improve Ireland's offering safely	• To support ETFs growth, the CBI should lead in regulation, reconsider portfolio transparency requirements, and engage in EU discussions on UCITS ETF fund naming requirements for harmonisation. • The Department of Finance and the CBI should actively engage in EU discussions to ensure a strong legislative framework for Money Market Funds (MMFs). • To support private asset growth, the CBI should review its AIF Rulebook and related requirements, and implement measures to enhance the attractiveness of the ILP, including a participation exemption and review the Dividend Withholding Tax (DWT) exemption.
Ireland's regulatory and supervisory regime: targeting risks, investing in digitisation and reducing costs to authorised firms	• The CBI should regularly review the authorisation process for investment funds and Funds Service Providers (FSPs), particularly where pre-submission and enhanced scrutiny is required, with increased transparency as to what is required in such instances. • With the aim of resolving data issues, the CBI should regularly share upcoming reporting requirement deadlines and expected ad hoc reporting required to support planning and coordination around these requirements. • The CBI should look to identify and rectify data gaps by engaging with other regulators and industry. • The CBI should provide the Department of Finance with relevant fund industry data (to the extent permitted by legislation) on a regular basis. • Cooperation at an EU level should be carried out to potentially share data on unregulated funds. • Where overlaps of data reporting occurs at both EU and national level, the CBI should look to minimise duplication. • As part of the CBI's review of the Fund Management Company Guidance, the CBI should look to ensure senior management requirements are effective and proportionate, while promoting diversity and inclusion in the sector.
Skills and talent	• Industry should enhance strategies to attract talent by strengthening partnerships with education providers across regions.

Irish Funds Sector 2030 Review Final Report

October 2024

Relevant to All Firms

Summary of recommendations

Theme	Recommendation
Enabling more retail investment	• The Department of Finance should lead efforts to map the savings and investment landscape, understand trends, and examine risks, challenges, and opportunities from the perspectives of policymakers, regulators, product providers, and consumers. • The establishment of an annual savings and investment forum. • Proposed reforms to the taxation of Irish-domiciled funds include removing the eight-year deemed disposal requirement, aligning the Investment Undertaking Tax (IUT) rate and Life Assurance Exit Tax (LAET) rates with the Capital Gains Tax (CGT) rate (33%), and allowing limited loss relief, with similar changes suggested for equivalent products in the EU, EEA, and OECD territories. • Proposed reforms to the taxation of Irish-domiciled life products include removing the eight-year deemed disposal requirement, aligning the IUT and LAET tax rates with the CGT rate (33%), allowing limited loss relief, and repealing the 1% Life Assurance Levy, with similar changes suggested for equivalent products in the EU, EEA, and OECD. • The Life Assurance Levy – Old Basis Business regime should be wound down. • Work to simplify and consolidate the tax regime for offshore funds should be prioritised. • The CBI should leverage the data it collects to build a profile of Irish retail investors, their activities, attitudes and behaviours. • The Competition and Consumer Protection Commission should conduct additional surveys of retail investors to better understand investment behaviour and trends over time.
Providing stability and certainty for investment in property in Ireland	• The Department of Finance should undertake a public consultation setting out potential options for an entity-level tax for Irish Real Estate Funds (IREFs). • If reviewing the role of Exempt Unit Trusts (EUTs) in the property market, it is recommended to also examine the regulatory oversight by the CBI and the Interdepartmental Pensions Reform and Taxation Group (IDPRTG). • Legislation should be enacted to enable the Revenue Commissioners to collect data on large landlords and to share this data with the relevant civil and public authorities, in order to aid policy making.

Irish Funds Sector 2030 Review Final Report

October 2024

Relevant to All Firms

Summary of recommendations

Theme	Recommendation
Structured finance: assessing Ireland's regimes and improving transparency	• Government authorities should, through the Anti-Money Laundering and Countering Terrorist Financing (AML/CFT) Steering Committee, further investigate money laundering and terrorist financing risks in the Special Purpose Entity (SPE) sector and develop targeted legislative measures, potentially prohibiting or restricting high-risk SPE activities, both domestically and at the European level. • The introduction of the new EU AML package into Irish law should be prioritised. • Legislation should be enacted to allow the Revenue Commissioners to regularly publish a list of SPEs using the Section 110 regime, including entity names. • The Department of Finance and the Revenue Commissioners should consider requiring entities using the Section 110 designation to obtain and annually update a Legal Entity Identifier. • The Department of Finance and CBI, should evaluate if changes are needed to maintain ongoing SPE statistical reporting. • The Department of Enterprise, Trade and Employment should continue to enhance oversight of Section 142 of the Companies Act.
Engagement and promotion: building on strong foundations	• An annual roundtable between the Minister for Finance, the Minister of State, and a diverse group of representatives from the funds and asset management sector. This initiative aims to foster dialogue and collaboration within the industry. • The Department of Finance should enhance policy engagement by strengthening its role in the Funds and Asset Management Steering Group, clarifying internal roles, and establishing cross-cutting issue working groups. • The CBI should review its engagement with the funds sector to ensure it is as effective and efficient as possible. • Industry should engage with policy-makers by presenting targeted, well-evidenced, and pragmatic proposals.
The funds sector's role in supporting the green transition	• The Ireland for Finance strategy should continue to promote Ireland as a location for sustainable finance.

Irish Funds Sector 2030 Review Final Report

October 2024

Relevant to All Firms

Summary of recommendations

Theme	Recommendation
Harnessing technology to boost Ireland's competitiveness	● Industry, through the relevant representative bodies, should actively harness the collective expertise and experience of the funds and asset management sector in Ireland to support technological innovation. ● Industry should continue to engage with the Department of Finance and the CBI to ensure that policy makers and regulators are aware of and understand the application of technological innovations within the sector and are in a position to assess compliance with the current regulatory and legislative frameworks. ● Industry should continue to engage constructively with the CBI and the Department of Finance, as necessary, with a view to mapping out a pathway for adoption of tokenisation. ● Greater coordination among Government departments and agencies and the CBI to ensure that public supports for technological innovation and digital transformation are complementary. ● The Department of Finance should work together with the CBI, and other Government Departments and agencies as required, to remain active in the development and implementation of the regulatory and legislative frameworks impacting technological innovation at a national, EU and international level.

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Relevant to All Firms

Push for private assets in Ireland

The Department of Finance recognises the importance of the private assets sector in Ireland and how it will play a key role in growing the Irish Funds industry. The introduction of past regulation such as the Irish Collective Asset-management Vehicle (ICAV) Act and the ILP (Amendment) Act 2020, have been recognised to have been significant drivers in the growth of Irish domiciled funds.

Future support of Irish private assets growth

- Revisions to provisions of the CBI Alternative Investment Fund (AIF) Rulebook.
- More favourable tax requirements for private asset investments.
- Review of 1907 Limited Partnerships (1907 LPs) legislation.

No recommendation for an unregulated fund structure in Ireland

Unregulated structures in Luxembourg have been key to their success in the private assets markets

€150 billion	**Ireland's AUM of private assets**
€625 billion	**Luxembourg Limited Partnership Structures AUM of private assets**
€1,045 billion	**Luxembourg's AUM in private assets**

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Irish Funds Sector 2030 Review Final Report

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Relevant to All Firms

The Report highlights the need for greater data access to improve operations like investment analytics and risk management. This data can aid both FSPs and regulators in decision-making.

The Report sees Distributed Ledger Technology (DLT) and tokenisation as potentially revolutionary for the funds industry, enabling real-time trades, faster clearing, and instant settlement.

Ireland's many tech firms and FinTechs create opportunities for third-party providers to address sector technology gaps, benefiting smaller firms lacking in-house resources.

Automating outdated systems is vital due to the industry's reliance on legacy technology. Collaboration is essential for standardisation and interoperability as new technologies are adopted.

Despite limited use in Ireland, broader adoption of DLT will require analysing regulatory frameworks and addressing challenges. With other jurisdictions advancing, Ireland must see this as a growth opportunity.

Irish Funds Sector 2030 Review Final Report

October 2024

Relevant to All Firms

Enabling More Retail Investment

Current Savings: Irish households hold roughly €178 billion in banks, credit unions, and state savings products, posing risks during inflation.

Investment Encouragement: To protect against inflation, households are encouraged to invest their savings into various financial instruments.

Taxation Barrier: Complex taxation rules on investment funds and life assurance policies create significant barriers for retail investors.

Comprehensive understanding: The Department of Finance needs a deeper, data supported understanding of the savings and investments landscape in Ireland to facilitate decision making.

Data Needs: There is lack of datasets on retail investment in Ireland. To tackle this problem, the CBI should use regulatory reporting data collected from FSPs and surveys by the Competition and Consumer Protection Commission to form a profile of Irish retail investors.

Investor Education: To foster an investment culture in Ireland and improve policy-making, it's essential to enhance financial literacy and investor education. This includes targeted initiatives for adults, better data collection and active engagement from the industry.

Managing Special Purpose Entities (SPEs)

Regulatory Gaps: Many SPEs in Ireland lack sufficient regulatory governance.

Risk Management: Only 10% of SPEs satisfy AML/CFT criteria. To manage risks, enhancements in AML framework, transparency, regulation, and consideration of existing Company Law requirements are needed.

Transparency Measures: Assigning Legal Entity Identifiers (LEIs) to SPEs can increase transparency.

Irish Funds Sector 2030 Review Final Report

October 2024

Relevant to All Firms

Sustainable Finance in Ireland

To further establish Ireland as a leading sustainable financial hub, it is recommended that initiatives to enhance sustainable finance skills continue to be supported.

Programs such as Sustainable Finance Skillnet and the International Sustainable Finance Centre of Excellence will help develop the Irish market's skills and expertise.

Ongoing Engagement

The Report emphasises that engagement among the Government, enterprise agencies, industry, and the CBI is crucial for identifying mandates and initiatives to enhance the growth of the Irish funds market.

Skills and Access to Talent

A proficient labour force is needed to implement industry changes.

Skills mismatches and shortages are areas of concern due to competition for skilled labour in the industry.

Inward migration, additional investment in in-house training, apprenticeships, and partnerships with third-level education providers are potential remedies to address the industry's skilled workforce shortage.

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ESMA Consultation Paper on Draft RTS for Open-Ended Loan-Originating AIFs under AIFMD II

December 2024

Relevant to Investment Funds

The revised AIFMD requires the European Securities and Markets Authority (ESMA) to develop draft regulatory technical standards (RTS) **to ensure Loan-Originating Alternative Investment Funds (LO AIFs) can manage liquidity risks while maintaining an open-ended structure.** The consultation seeks feedback on these RTS, which cover liquidity management, liquid assets, stress testing, and redemption policies. The goal is to ensure these funds can meet redemption requests without compromising their investment strategies.

The draft RTS aims to create a harmonised framework for AIFMs and National Competent Authorities (NCAs) across the EU, enhancing investor protection and financial stability. Responses are due by 12 March 2025, and ESMA plans to submit the final report and standards to the European Commission by late 2025.

Directive (EU) 2024/927 amends the AIFMD and UCITS Directives in areas like liquidity risk management and supervisory reporting, and allows LO AIFs to be open-ended if they meet specific criteria.

Requirements for LO AIFs to Maintain an Open-ended Structure

Sound liquidity management

Alternative Investment Fund Managers (AIFMs) must demonstrate that their liquidity management aligns with the fund's investment strategy and redemption policy, maintaining sufficient liquid assets to meet liabilities.

Appropriate redemption policy

AIFMs must consider redemption frequency, target investors, notice period, and amount of liquid assets to be held.

Availability of liquid assets

AIFMs must assess factors like expected cash flows, loan maturity, investor behaviour, and market conditions to determine the appropriate proportion of liquid assets.

Liquidity of stress tests

Stress tests should be conducted at least quarterly unless a higher or lower frequency is justified by the characteristics of liquidity of the loans, considering both normal and exceptional liquidity conditions.

Ongoing monitoring

AIFMs must monitor factors such as liquid asset levels, loan repayment schedules, investor behaviour, and early warning signals of loan impairment.

European Commission Adopts ELTIF 2.0 Level 2 RTS

October 2024

Relevant to Investment Funds

The European Commission adopted the Commission Delegated Regulation supplementing the European Long-Term Investment Funds Regulation (ELTIF RTS) on 25 October 2024. With the underlying rules coming into effect on 26 October 2024. The initial draft from ESMA (December 2023) was rejected. The revised text submitted in April was further amended by the Commission.

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 a predefined 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.

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European Commission Adopts ELTIF 2.0 Level 2 RTS

October 2024

Relevant to Investment Funds

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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ESMA Q&A for the use of ESG and Sustainability Terms in Fund Names

December 2024

Relevant to Investment Funds

ESMA issued three Q&As in relation to the application of its Guidelines on funds' names using ESG or sustainability-related terms. This included the below three questions and answers outlined below.

ID-2368:

When applying the exclusions referred to in paragraphs 16-18 of the guidelines, can fund managers consider the underlying project for use of proceeds instruments or should the manager always consider the whole issuer?

- European Green Bonds issued under the European Green Bonds Regulation (Regulation (EU) 2023/2631) are exempt from the exclusions in paragraphs 16-18 of the Guidelines.
- For investments in other green bonds not issued under this regulation, exclusions in paragraphs 16-18 apply based on the economic activities they finance. The look-through approach ensures these bonds do not fund activities listed in Article 12(1)(a-b) and (d-g) of Commission Delegated Regulation (EU) 2020/1818. Investments in companies excluded under Article 12(1)(c) are always excluded.

ID-2371:

How should the exclusions related to controversial weapons referred to in Commission Delegated Regulation (EU) 2020/1818 be interpreted for different types of controversial weapons?

- To apply the exclusions in paragraphs 16-18 of the Guidelines related to Article 12(1)(a) of Commission Delegated Regulation (EU) 2020/1818, national authorities can refer to the list of controversial weapons in indicator 14 of Table 1 of Annex I of Commission Delegated Regulation (EU) 2022/1288. This list includes anti-personnel mines, cluster munitions, chemical weapons, and biological weapons.

ID-2374:

Is there a minimum level for investment funds with the term "sustainable" in their name to be considered to be investing "meaningfully" in sustainable investments?

- Funds using "sustainable" terms should invest significantly in sustainable investments as defined by Article 2(17) SFDR. National authorities should analyse each case individually, but funds investing less than 50% in sustainable investments may not be considered as meaningfully investing in them. This threshold could be higher depending on the specific situation.

Categorisation of Products under the SFDR: Proposal of the Platform on Sustainable Finance

December 2024

Relevant to Investment Firms

The EU Platform on Sustainable Finance (the Platform) proposed the Categorisation of Products under SFDR which would materially impact the current version of SFDR. This approach aims to benefit retail investors by allowing investors to easily identify products that match their sustainability preferences, as the categorisation should reflect the sustainability strategy employed by each financial product.

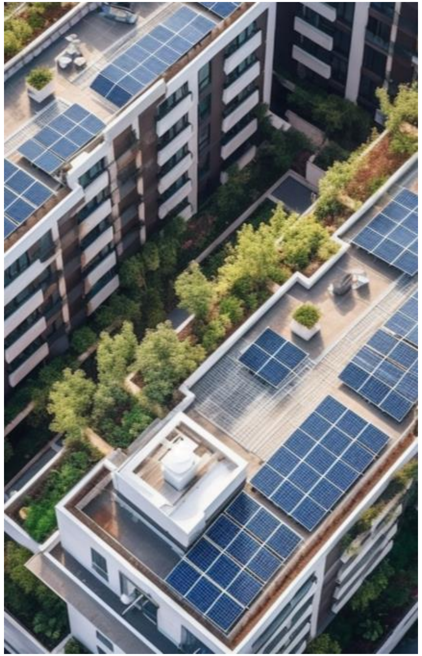
The scheme includes three categories:

Sustainable	Investments in sustainable investments or investments aligned with the EU Taxonomy. These funds should contribute to sustainability without significant harm.
Transition	Investments supporting the transition to a net-zero and sustainable economy, avoiding carbon lock-ins.
ESG Collection	Investments excluding harmful activities and focusing on investments with better environmental or social criteria, or applying various sustainability features.

Each of the three categories would have defined minimum criteria that must be achieved to apply to the category label. This includes holding a pre-defined number of investments to fulfil the core sustainability objective and using measurable indicators applicable to the category that are sufficiently objective.

The scheme aims to address SFDR disclosure issues, prevent fragmentation, and facilitate sustainable investment flows. However, it requires further development and real-world testing to refine thresholds and gain market acceptance.

To meet the objectives of the EU Sustainable Finance Framework, the Platform also suggests enhancing the definitions of Sustainable Investments (SI) and the Do No Significant Harm (DNSH) test as per Article 2 (17) of SFDR, and aligning them with the Taxonomy concept. As SI is currently open to interpretation and lacks consistency, while DNSH thresholds should be evidenced and science based.



Categorisation of Products under the SFDR: Proposal of the Platform on Sustainable Finance

December 2024

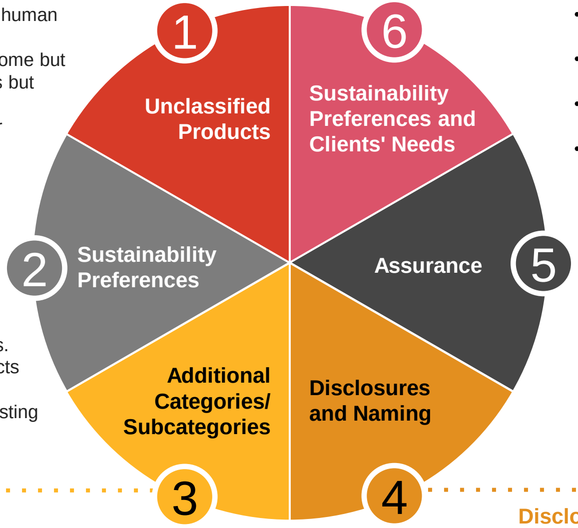
Relevant to Investment Firms

Unclassified Products

- Products outside the main categories are labeled "unclassified".
- Report on taxonomy alignment, GHG emissions, human rights due diligence, and UN Guiding Principles.
- Eligible if they lack sustainability features, have some but don't meet category ambitions, or meet ambitions but aren't categorized by FMPs.
- Prohibited from describing ESG characteristics or sustainability features in marketing material.

Sustainability Preferences and Clients' Needs

- Sustainability should remain part of the MiFID suitability assessment.
- Unclassified products shouldn't address sustainability preferences.
- Use categories to help investors understand different sustainability credentials.
- Institutional investors should have flexibility in using the categorisation scheme.
- Adjust sustainability preferences to align with the categorisation scheme.



Sustainability Preferences

- Align products with investors' sustainability preferences, supported by mandatory disclosures.
- Expand scope beyond SFDR to include all products under IDD/MiFID sustainability preferences.
- Develop a common understanding of impact investing within the EU sustainable finance framework.

Assurance

- A well-crafted categorisation scheme based on the Sustainable Finance Framework and its tools should not necessitate additional assurance requirements which could higher costs.

Additional Categories/Subcategories

- Introduce mixed products fitting into the three main categories.
- Assign rankings for investor comparisons.
- Create theme-based subcategories leveraging the six environmental Taxonomy objectives.
- Avoid process-based categories and exclusion-only categories.

Disclosures and Naming

- Disclosures should contain the most important elements; reporting can be more detailed.
- Sustainable fund naming terms should align with each category and be used only for qualifying products.

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Revised Recommendations for Liquidity Risk Managment for Collective Investment Schemes

November 2024

Relevant to Investment Firms

International Organisation of Securities Commissions (**IOSCO**) proposes revisions to its 2018 Liquidity Recommendations for Collective Investment Schemes (CIS) to enhance liquidity risk management. These changes aim to protect investors, maintain market order, and reduce systemic risk. Key areas include aligning asset liquidity with redemption terms, expanding liquidity tools, and improving governance and disclosures. Public comments are invited by February 2025, with a review planned by 2026.

The report is divided into several sections, each focusing on different aspects of liquidity risk management:

- **CIS Design Process Recommendations:** Focus on liquidity during product design. Assess how marketing and distribution impact liquidity and investor suitability.
- **Liquidity Management Tools and Measures Recommendations:** Use a variety of tools, including anti-dilution and quantity-based measures, to manage liquidity risk in both normal and stressed conditions.
- **Day-to-Day Liquidity Management Practices Recommendations:** Regularly monitor subscriptions and redemptions. Maintain strong liquidity management practices to ensure fund stability.
- **Stress Testing Recommendation:** Conduct stress tests to assess CIS resilience and ensure effective liquidity management strategies.
- **Governance Recommendations:** Establish governance structures with clear roles and responsibilities for managing liquidity risk.
- **Disclosures to Investors and Authorities Recommendations:** Ensure transparency by providing clear and comprehensive information on liquidity risk management to investors and authorities.

Overall, the proposed revisions aim to enhance the robustness of liquidity risk management practices for CIS, ensuring that they are well-prepared to handle both normal and stressed market conditions while protecting investors' interests.

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Guidance for Open-Ended Funds: Effective Implementation of the Recommendations for Liquidity Risk Management

IOSCO has released a consultation report on new Guidance for Open-ended Funds for Effective Implementation of the Recommendations for Liquidity Risk Management.

- This follows their 2018 recommendations and aims to address vulnerabilities from liquidity mismatches in open-ended funds.
- The guidance seeks feedback on enhancing liquidity risk management by integrating both quantitative and qualitative factors, ensuring portfolio liquidity aligns with redemption terms, and implementing effective liquidity management tools (LMTs).
- The goal is to protect investors, maintain market orderliness, and reduce systemic risk, thereby supporting financial stability.

Responses to this consultation is open until 11 February 2025, and IOSCO aims to publish its final report in H1 2025.

	Key points
Integration of Quantitative and Qualitative Factors	• Emphasises the importance of integrating both quantitative and qualitative factors to determine the liquidity of an OEF's assets and overall portfolio. This approach helps responsible entities to better assess and manage liquidity risks.
Consistency Between Portfolio Liquidity and Redemption Terms	• Ensuring that the liquidity of the portfolio is consistent with the redemption terms of the fund is crucial. This alignment helps in minimising structural liquidity mismatches and protects investors.
Framework for Liquidity Management Tools (LMTs)	• Outlines a comprehensive framework for the design and use of LMTs and other liquidity management measures. It encourages responsible entities to use their professional judgment to determine the most effective tools for their OEFs.
Activation and Deactivation of LMTs	• Considerations for the appropriate activation and deactivation of quantity-based LMTs and other liquidity management measures are provided. This ensures that these tools are used effectively and appropriately.
Stress Testing	• Includes recommendations for stress testing to assess the resilience of OEFs under different market scenarios, including historical and hypothetical stress events. Stress testing helps identify potential vulnerabilities and informs the design and calibration of LMTs.

Relevant to Investment Funds

Guidance for Open-Ended Funds: Effective Implementation of the Recommendations for Liquidity Risk Management

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Challenges addressed	**Structural Liquidity Mismatches:** Ensuring that OEFs can meet redemption requests without significant market impact, especially during stressed conditions.
	Operational Barriers: Overcoming challenges related to the implementation of LMTs, such as costs, data availability, and coordination with third parties. In some jurisdictions, the inclusion and use of certain anti-dilution LMTs may face market-wide operational barriers, such as the need for substantial reconfiguration of current distribution and order-processing practices.
	Negative Perceptions: Addressing investor concerns about the impact of LMTs on fund performance and redemption rights. Investors may fear being penalised more than warranted by the imposition of existing liquidation costs or perceive these costs as extra, discouraging investment in funds implementing anti-dilution LMTs.
	Suitability for Different Investor Categories: Certain tools, such as in-kind redemptions, are not suitable for every investor category and are more appropriate for institutional investors rather than retail investors. Additionally, these tools may not be suitable for fund strategies that trade in less fungible securities.
Clarifications	The Guidance **does not apply to exchange-traded funds (ETFs) and money market funds (MMFs)** due to their unique characteristics.

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CBI's Guidance Note for Crypto-Assets Service-Providers Key Facts Document

December 2024

Relevant to Crypto-Asset Service Provider's

The document outlines the CBI's expectations for Crypto-Asset Service Providers (CASPs) seeking authorisation. It aims to provide guidance on the content of the Key Facts Document (KFD) required during the pre-application phase.

Sections 1-8 of the Key Facts Document remain consistent with those for traditional service providers. The following sections introduce distinctive elements tailored specifically for Crypto service providers.

9. Client Assets
Details at a minimum should include (i) the segregation of client assets, (ii) safeguarding of cryptographic keys, (iii) safeguarding of client funds and (iv) oversight arrangements.

10. Providing the Service of Custody and Administration of Crypto-assets on Behalf of Clients
Custody & Administration Arrangements: Description of custody services, policies, and procedures for managing operational and ICT risks.

11. Operation of a Trading Platform for Crypto-assets
Details on the trading platform including admission rules, customer due diligence, trading protocols, and market abuse prevention.

12 & 13. Providing the Service of Exchanging and Executing Orders for Crypto-assets
(i) Description of the non-discriminatory policy outlining client types and conditions, and the pricing methodology for exchanging crypto-assets, including limits, and how volume and market volatility affect pricing, (ii) Arrangements for executing orders, including trading platforms, execution factors, and client consent.

14. Providing Advice on Crypto-assets or Portfolio Management of Crypto-assets
Policies, procedures, as well as arrangements in place to ensure advisors possess the necessary knowledge and competence to fulfill obligations.

15. Providing Transfer Services for Crypto-assets on Behalf of Clients
Specify the types of crypto-assets for transfer services and describe ICT and human resources arrangements to manage risks. Outline clients' rights and ensure they are well-informed. Detail the insurance policy, including coverage for potential cybersecurity losses.

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European Union (Markets in Crypto-Assets) Regulations 2024

December 2024

Relevant to Crypto-Asset Service Provider's

The Minister for Finance has enacted Statutory Instrument (S.I.) No. 607 of 2024, known as the **European Union (Markets in Crypto-Assets) Regulations 2024**.

EU's Markets in Crypto-Assets (MiCA) Regulation aims to create a harmonised regulatory framework for crypto-assets across the EU.

The new legal framework will support market integrity and financial stability by regulating public offers of crypto-assets and by ensuring consumers are better informed about their associated risks.

The **key points** of this Statutory Instrument are presented across.

01 Designation of Competent Authority

Appoints the Central Bank of Ireland (CBI) as the National Competent Authority (NCA) for overseeing the implementation of MiCA in Ireland.

02 Supervisory and Investigative Powers

The CBI is granted extensive powers to supervise and investigate crypto-asset service providers. This includes the authority to require information, suspend services, and enforce compliance with MiCA.

03 Administrative Penalties

Details the administrative penalties and measures for non-compliance for both regulated and non-regulated financial service providers. Non-compliance with the regulations can result in significant administrative penalties. The CBI has the authority to impose fines, suspend services, or even prohibit operations.

04 Transition Period

Specifies the transition period for firms offering crypto-assets services before 30 December 2024, allowing them to do so until 30 December 2025, or until they are granted or refused an authorisation under Article 63 of the MiCA Regulation, whichever is sooner. This allows existing providers time to adjust their operations to meet the new standards.

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ESMA Guidelines on the Conditions and Criteria for the Qualification of Crypto-Assets as Financial Instruments

December 2024

Relevant to Investment Firms

ESMA has issued guidelines to classify crypto-assets as financial instruments under the Markets in Crypto-Assets Regulation (MiCA). The guidelines address inconsistencies in defining 'financial instrument' across EU Member States, aiming for consistent classification and regulatory treatment.

- A technology-neutral approach is emphasised, focusing on the rights and obligations of crypto-assets rather than their technological form.
- A case-by-case analysis is recommended to determine if a crypto-asset qualifies as a financial instrument.
- Detailed criteria are provided for classifying crypto-assets as transferable securities, money-market instruments, units in collective investment undertakings, derivative contracts, and emission allowances.
- The guidelines address the classification of unique and non-fungible crypto-assets (NFTs) and hybrid tokens, focusing on their intrinsic value, utility, and ownership rights.
- Harmonisation and consistency in classification across the EU are promoted to prevent regulatory arbitrage and ensure a level playing field.
- The guidelines provide clarity to national competent authorities (NCAs) and financial market participants on which crypto-assets should be considered financial instruments.
- Potential implications of classifying crypto-assets as financial instruments include the application of the EU passporting system and investor protection-related conduct of business rules.

ESMA's guidelines aim to enhance investor protection, reduce misclassification risks, and promote a safer, more transparent market environment. The guidelines foster supervisory convergence and fair competition by ensuring all NCAs apply the same criteria and standards.

EBA and ESMA Guidelines on Assessing Management Body Suitability for ART Issuers and CASPs

December 2024

Relevant to CASPs and ART Issuers

The joint EBA and ESMA Guidelines provides common criteria for evaluating the suitability of individuals in management bodies of Asset Referenced Tokens (ART) issuers, and Crypto-asset Service Providers (CASPs). It ensures these bodies are composed of fit and proper individuals, promoting sound governance and market integrity. These guidelines take effect on 4 February 2025.

1 Compliance and Reporting Obligations

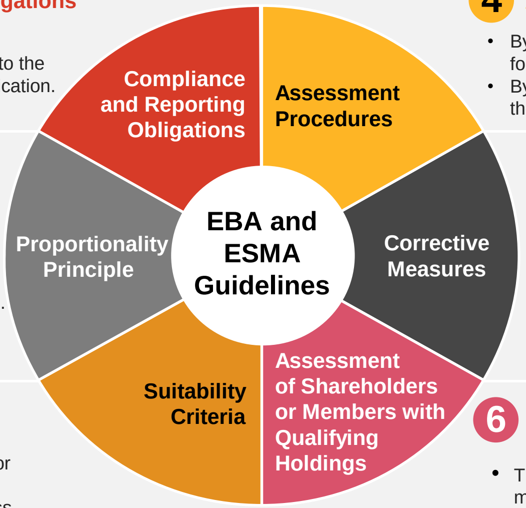
- Competent authorities must report their compliance status with these guidelines to the EBA or ESMA within two months of publication.

2 Proportionality Principle

- Governance arrangements should be proportionate to the risk profile and business model of the ARTs and CASPs.

3 Suitability Criteria

- Members must have no criminal record or penalties related to financial misconduct.
- Members should understand the business, governance, and risks associated with the issuer or CASP.
- Members must be able to commit sufficient time to their roles.



4 Assessment Procedures

- By Issuers (ARTs and CASPS): They have the primary responsibility for ensuring the suitability of their management body members.
- By Competent Authorities: Authorities must assess suitability during the authorisation process and on an ongoing basis.

5 Corrective Measures

- If members do not meet the suitability criteria, corrective actions such as training, adjusting responsibilities, or replacing members should be taken.

6 Assessment of Shareholders or Members with Qualifying Holdings

- The guidelines also cover the assessment of shareholders or members with significant holdings in ARTs or CASPs, focusing on their reputation, financial soundness, and the absence of money laundering or terrorist financing suspicions.

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Central Bank of Ireland dedicated Fitness and Probity Unit

December 2024

Relevant to All Firms

The Central Bank of Ireland (CBI) announced the **establishment of a dedicated Fitness and Probity Unit.**

Purpose	▪ The unit aims **to enhance the fitness and probity regime**, ensuring individuals in key financial roles are competent, honest, ethical, and financially sound.
Background	▪ This move **follows the Enria report from July 2024**, which highlighted areas for improvement in the regime. The findings of the report were used as a basis for implementing reforms to enhance the regime's overall effectiveness.
Implementation	▪ The new unit will be **operational from early January 2025**.
Staffing	▪ The unit will be **staffed by experienced regulators** from within the CBI.
Strategic Plan	▪ This initiative is part of the Central Bank's broader strategy **to transform its regulatory and supervisory approach**.

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CBI's Investment Funds Supervision Bulletin

December 2024

Relevant to All Firms

The CBI launched the Investment Funds Supervision Bulletin to highlight supervisory, and authorisation focuses.

Investment Funds Sector Regulation

Effective regulation safeguards investors and financial stability, maintaining market integrity and confidence. The CBI ensures compliance with national and EU regulations, guiding enforcement actions.

Investment Funds Supervisory Model

The CBI leverages data analytics and technology to identify risks and trends, leading to targeted engagement with Fund Management Companies (FMCs). This approach aligns with strategic themes to enhance agility, resilience, diversity, and intelligence.

Recently Completed Thematic Reviews

Fixed Operating Expense Models

Supervisors reviewed Fixed Operating Expense (FOE) Models after a March 2023 letter on Costs & Fees, finding transparency issues and varying fee retention levels. Improvements in periodic reviews are needed to ensure appropriate fee structures for investors.

What should FMCs do now?

The Central Bank expects FOE models to ensure fee transparency and protect investors, with annual reviews considering fund objectives and performance. Independent reviews should align fee structures with the fund's risk profile and returns, guiding fee analysis and supervision.

Investment Advisors

The 2023 review found higher Investment Advisor (IA) fees without clear justification and raised concerns about fee disclosure standards and the regularity of periodic fee reviews for funds with both an IA and a discretionary Investment Manager.

What should FMCs do now?

FMCs must ensure fee arrangements match services and review them regularly. The CBI is enhancing its evaluation of the IA role and fee model, ensuring fees reflect services and prioritise investors' best interests.

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CBI's Investment Funds Supervision Bulletin

December 2024

Relevant to All Firms

Other Significant Updates and Reviews With Communications To Follow

Exchange Traded Funds (ETFs)

The Central Bank reviewed how FMCs manage Authorised Participants (APs) and Contracted Market Makers (CMMs) in 2024, noting good practices but highlighting areas for improvement. The Irish ETF ecosystem is effective but may rely heavily on a few APs and CMMs.

Irish Property Funds

In Q1 2024, the CBI found some FMCs managing €28.59 billion in Irish property funds lacked specific Liquidity Stress Testing (LST) and didn't conduct LSTs frequently enough. It recommends quarterly or more frequent LSTs to ensure robust risk management, guiding supervision into 2025.

Data Led Supervision

The CBI is enhancing data capabilities and urging FMCs to ensure accuracy. Starting 16 December 2024, the new Daily Investment Fund Return (DIFR) will collect daily data from non-money market funds, improving oversight and supervision.

Liquidity Management Tools

The Central Bank is reviewing Liquidity Management Tools (LMTs) to understand their use in various market conditions. A Q3 survey revealed gaps in LMT availability and usage, with a targeted questionnaire to be issued in early 2025 and findings shared by year-end.

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Relevant to All Firms

A look to the Future

Risk Register

The CBI reviewed Depositaries and Fund Administrators to evaluate their Risk Registers, focusing on risk assessment methods, reporting (including emerging risks), and entity-specific taxonomies and self-assessments. Supervisors will engage with firms to address findings, using insights to benchmark risk management frameworks across the sector.

Securities Lending Review

In Q1 2024, a review began to assess UCITS and AIF securities lending arrangements for compliance with ESMA Guidelines. The Central Bank will conclude this review in 2025 and share its findings with the industry.

Common Supervisory Action (CSA) on Sustainability Risks and Disclosure

ESMA initiated a Common Supervisory Action (CSA) to assess Fund Management Companies' compliance with SFDR. The CSA report will be released in Q2 2025, followed by a communication from the CBI to the industry.

Looking Forward

In 2025, the CBI will refine its regulatory approach based on the Risk Outlook Report, focusing on ESMA CSA, Liquidity Management Tools, Hedge Funds, and the ESMA Costs and Fees Survey. For authorisations, the focus will be on SFDR and ESMA Guidelines on fund names, with post-authorisation Quality Assurance reviews.

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Dear Chair Letter: Primary and Secondary Market Trading Arrangements of ETFs

November 2024

Relevant to Fund Management Companies

The CBI issued on 28 November 2024 a Dear Chair Letter on Exchange Traded Funds (ETFs) primary and secondary market trading arrangements, focusing on Authorised Participant (APs) and Market Makers (MMs). The letter outlines findings and follow-ups for Fund Management Companies (Firms) and aims to better understand the AP and MMs market. The review had two phases:

- **Quantitative assessment:** A questionnaire was sent to all Firms managing Irish authorised ETFs to gather data on APs and MMs, AP activity over 12 months, and ETF listing locations.
- **Qualitative assessment:** A questionnaire was also sent to a sample of Firms to assess the oversight they perform on APs and Contracted Market Makers (CMMs).

Key findings from the CBI'S review

Inadequate due diligence

Few Firms conducted proper due diligence on APs and CMMs.

- Most lacked evidence of appropriate due diligence, had minimal reporting to boards, and lacked formal policies and procedures.
- Some treated APs and CMMs as outsourced service providers.

Limited on-going monitoring

The review found significant gaps in ongoing monitoring of APs and CMMs by most Firms.

- Policies should clarify oversight roles.
- Some good practices included regular reporting on metrics like market activity and trading data.
- However, there was little evidence of risk monitoring and stress testing. This lack of monitoring limits understanding of APs and CMMs' roles and importance.

Lack of board oversight

Boards receive minimal reporting on AP and CMM activities, limiting their oversight of performance and risks.

Boards should have contingency plans to ensure ETFs function effectively if primary market activity falters.

AP and MM concentration

Irish ETFs are accessed by several APs, with 81% of activity concentrated among the top five.

Similarly, 88% of ETFs use the top five CMMs.

While the ETF ecosystem functions effectively, this concentration poses risks to liquidity, arbitrage, and market access during disruptions.

Actions required

Consider IOSCO good practices for ETFs and close gaps:

- Firms should follow Measure 4 of IOSCO good practices for ETF due diligence on APs and MMs during onboarding and ongoing.
- Consider the findings of the CBI Dear Chair Letter.
- Apply elements of the CBI Outsourcing Guidance to APs/CMMs.

Reporting on activities of APs and CMMs:

- Assess the reporting received by Firms on AP and CMM activities.
- Ensure Firms are aware of AP interactions with ETFs.
- Verify CMM trading is within contract parameters.

Review AP and CMMs relationship risks:

- Assess if Firms have engaged with enough APs.
- Review CMM relationships considering the ETF.
- Consider substitutability risk and implement mitigants.
- Formalise arrangements with CMMs.
- Ensure CMM contracts are noted by boards.

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ESMA Consultation Paper on amendments to MiFID II Market Research

October 2024

Relevant to Investment Firms

ESMA issued a consultation paper on MiFID II changes related to payment for research and execution services, based on an EU Commission request. Comments are due by 28 January 2025.

Under MiFID II, investment firms must ensure research provision is not an inducement.

Previously, firms could only pay for research using their own resources or a separate account. Amendments in 2021 allowed joint payments for execution services and research for smaller companies (market cap below EUR 1 billion) to enhance research access while maintaining investor protection.

Proposed Amendments to Refine Research Payment Regime

Alignment with Investor Protection Goals

The amendments are designed to balance the revitalisation of the investment research market with the need to protect investors from potential conflicts of interest and excessive costs associated with research services.

Expanded Payment Options

The new framework will allow joint payments for research and execution services regardless of the issuer's market capitalisation, enhancing flexibility for investment firms.

Enhanced Transparency and Accountability

Investment firms will be required to inform clients about their payment choices and the associated policies, ensuring clarity in how research is funded.

Annual Assessment Requirements

Firms will need to conduct annual evaluations of the research they utilise, focusing on its quality and effectiveness in aiding investment decisions. This assessment aims to prevent over-reliance on single research providers and promote a competitive research market.

These proposed changes reflect a shift towards a more integrated and transparent approach to research payments, aiming to foster a healthier investment research ecosystem while ensuring that investor interests remain paramount.

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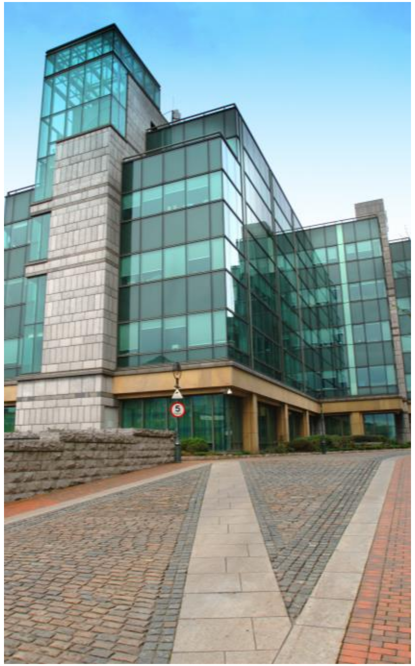
CBI's updated 41st Edition of the UCITS Q&A

November 2024

Relevant to Investment Funds



On 1 November 2024, the CBI released an updated version of the 41st Edition UCITS Q&A.

The updated 41st Edition Q&A revised the following Q&A's:

- **ID 1012:** The CBI requires that UCITS ETFs (including active ETF or a UCITS ETF share class of a UCITS) arrange for information regarding the identities and quantities of their portfolio holdings to be provided on a daily basis, and such arrangements are to be disclosed in the prospectus.
- **ID 1016:** Where an umbrella UCITS has sub-funds which are UCITS ETFs and some which are not, the "UCITS ETF" identifier should be included in the names of the sub-funds that are ETFs. However, if only a specific share class within a sub-fund qualifies as an ETF, the naming requirement applies to that share class instead.
- **ID 1088:** Sets out the requirement that when a UCITS contains both non-listed and listed ETF share classes, it must include clear explanations in the prospectus, which help investors differentiate between the two types of shares. The person responsible for the UCITS ETF must ensure the prospectus details what investors can expect based on whether they hold listed ETF share or unlisted share classes.

These sections have been updated to **incorporate changes related to the ETF naming requirements at the share class level**. The changes aim to ensure that the naming conventions accurately reflect the characteristics of each share class, enhancing transparency for investors. Historically, ETF naming conventions were applied at the fund level. However, with the growing complexity and variety of ETF offerings, **there was a need to extend these requirements to the share class level** to better inform investors and prevent confusion.

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