3W - Fund Distribution Watch

What's new in the cross-border distribution world?

July to September 2020

www.pwc.lu/3w-watch

pwc

What's new?

Austria 8

- Proposed tax measures intended to facilitate investment (COVID-19)

Belgium 8

- Guidelines on implementing EU directive, disclosure of cross-border arrangements (DAC6)

France 9

- Sustainable finance and collective investments: the AMF updates its policy on collective investments incorporating non-financial criteria
- Sustainable finance and collective investment schemes: the AMF published an update of its Recommendation DOC-2020-03 regarding investor information
- Guidelines and forms on exemption from WHT on income distributed by French companies to UCITS established in foreign countries.

Europe 36

- CRD – Level 2 – EBA issues Final Draft Amending RTS and ITS on passport notifications
- CRR/COVID-19 – Level 2 – Temporary Commission Delegated Regulation 2020/866 amending Annex to RTS for prudent valuation published in the OJEU
- Brexit – Level 2 – Commission publishes Revised Stakeholder Notice on asset management
- European Commission adopts Tax Package for fair and simple taxation
- Brexit – Level 2 – Commission publishes Revised Stakeholder Notice on banking and payment services
- AML/CFT – Law establishing a Register of Fiduciaries and Trusts enters into force on 17 July 2020
- Brexit – Level 2 – European Commission publishes Revised Stakeholder Notice on markets in financial instruments
- AIFMD/UCITS Directive/MMFR – Level 3 – ESMA publishes Translations of Guidelines on Liquidity Stress Testing in UCITS and AIFs
- Sustainable Finance – Level 2 – Commission adopts Delegated Acts supplementing the Benchmark Regulation
- PRIIPs Regulation – ESAs publish their Letter on outcome of review of Delegated Regulation on presentation and contents of KID
- Banking Supervision/COVID-19 – Level 3 – ECB adopts Recommendation 2020/35 on dividend distributions until 1 January 2021
- MiFID II/MIFIR – Level 3 – ESMA publishes Updated Opinion on post-trade transparency regarding third-country trading venues
- SSR/COVID-19 – Level 3 – ESMA renewing Decision requiring net short-position holders to report positions of 0.1% and above of the issued share capital published in the OJEU
- AIFMD – Level 0 – ESMA highlights priority areas for AIFMD review

- BMR – Level 1 – Commission consults on Proposal for a Regulation amending BMR to designate the replacement for certain benchmarks in cessation (such as LIBOR)
- European Commission – Laying down rules against tax avoidance practices

Germany 38

- No Covid-19 deferral of deadline for reporting cross-border tax arrangements
- Tax relief measures in legislation (COVID-19)

Italy 39

- Tax dispute resolution mechanisms, new mutual agreement procedures

Ireland 50

- Updated Q&As issued by the Central Bank of Ireland
- Sustainable Finance/SFDR – Level 2 – ESAs issue Survey on Templates for products promoting Environmental and/or Social (E/S) characteristics until 16 October 2020
- Financial Stability/COVID-19 – Level 3 – ESAs report on risks and vulnerabilities in the investment fund sector
- Financial Stability/COVID-19 – Level 3 – ESAs report on risks and vulnerabilities in the banking sector

Luxembourg 50

- UCITS – CSSF issues Guidelines on URR (June 2020)
- CSSF Regulation No. 20-02 as of 29 June 2020 and CSSF circular 20/743 as of 1st July 2020 Third-country firms providing investment services or performing investment activities
- AML/CFT – CSSF issues Circular 20/744 complementing Circular 17/650 on predicate tax offences with an additional list of indicators specific to collective investment activities
- UCI Investment Rules – CSSF issues FAQ (Version 0.1) on Circular 02/77
- Financial Supervision/COVID-19 – CSSF reiterates precautionary instructions amid a resurgence of COVID-19 cases
- CSSF Circular 20/744 complementing Circular CSSF 17/650: New specific indicators on tax fraud for the Asset Management industry
- CRR/Financial Reporting – CSSF issues Circular 20/745 updating Circular 14/593 on supervisory reporting requirements applicable to credit institutions
- CRR/COVID-19 – CSSF issues Circular 20/748 adopting EBA Guidelines 2020/07 on reporting and disclosure of exposures subject to measures applied in response to the COVID-19 pandemic
- AML/CFT – CSSF publishes first ML/FT sub-sector risk assessment report on specialised professionals of the financial sector providing corporate services (TCSP activities)
- UCI Investment Rules – CSSF updates FAQ (Version diffusée) on Circular 02/77
- DAC 6, CRS and FATCA: Luxembourg law transferring deadline extension for Automatic Exchanges of Information regimes into Luxembourg legislation has been voted
- UCITS – CSSF issues Version 9 of FAQs concerning the 2010 Law on undertakings for collective investment
- Company Law/COVID-19 – Law of 23 September 2020 extending measures concerning the holding of meetings in companies and other legal persons published in Memorial A

Netherlands 51

- Extension of the Emergency Package in response to COVID-19

United Kingdom 51

- Regulatory Reporting/COVID-19 – FCA updates web page on reporting deadline flexibility concerning the submission of certain regulatory returns
- Updated FCA regulated fees 2020/2021
- IFD/IFR – FCA issues Discussion Paper 20/2 on new domestic prudential regime for MiFID investment firms
- PRIIPs Regulation – HM Treasury issues Policy Statement on amendments to onshored PRIIPs Regime

World 54

- OECD – Release of global tax reporting framework for digital platforms in the sharing and gig economy
- Securities – IOSCO publishes its Report on the evolution of liquidity provision in equity securities markets

Michael Weis
Partner, Financial Crime and Forensic Services Leader

Editorial

Is the fight against money laundering "Mission Impossible"?

There are some interesting commonalities between the action movie franchise featuring IMF Special Agent Ethan Hunt and the series of EU Anti-Money Laundering (AML) Directives. They both started their success stories in the 1990s and they both release new episodes on a regular basis. MI is currently leading the race with episode 6 and is certainly the more popular, but AML is a key global regulatory topic requiring close attention.

AMLD5 is the latest in the series of EU AML directives (AMLD) and AMLD6, which focuses on criminal liability, should be out on 2 December 2020. The heat is on and this is exactly how the whole financial sector in particular feels about the fight against money laundering.

In 2019, global enforcers imposed about $8bn in anti-money laundering fines, almost double the amount of 2018 ($4.27bn) and 12 out of the world's top 50 banks were fined in 2019, with the trend set to continue.

Unfortunately, there has been quite a number of European-made AML scandals in the recent past, even though the EU sees itself as a highly regulated and low-risk market. These scandals have intensified calls for action, which came on top of such topics like FATF mutual evaluations and the implications of the latest FinCEN files scandal.

From an EU perspective, the continued focus on AML culminated on 7 May in an action plan outlining concrete measures regarding effective supervision, stronger enforcement actions and coordination of the regulation within the EU. The effective and consistent application of EU rules is a key focus and the European Banking Authority as new central AML watchdog is going to scrutinise this more closely, since it is responsible for leading, coordinating and monitoring AML/CFT efforts across the financial sector. For 2021 a single EU rulebook and the set-up of a dedicated EU-level supervisor are on the agenda, as is enhanced coordination for European Financial Intelligence Units, amongst other things.

The message is clear: financial institutions should get their AML/CTF act together, because their policies and procedures will be subjected to an increased level of scrutiny. In July, the European Parliament adopted a resolution promoting a much stricter approach towards Member States who fail to transfer AMLDs into national law within the specified deadlines. The European Parliament has reiterated the need for a transparent and robust methodology for assessing high-risk third countries with strategic deficiencies in their AML/CTF regimes. It suggests a complementary "grey list" alongside the Commission's revised list of high-risk countries, which will come into force in October 2020. Likewise, the resolution emphasises the importance of cooperation among FIUs, law enforcement and judicial systems across Member States and calls for interconnected beneficial ownership registers. Finally, it stresses the need for enhanced EU-level AML/CTF supervision and supports giving the European Central Bank (ECB) independent powers to revoke the licences of EU banks breaching AML/CTF regulations.

In Luxembourg, regulatory changes have already been set in motion with amendments being made in March to the Law of 11 November 2004 (as amended) and in August to CSSF Regulation 12-02 (as amended) and complemented by the amended grand-ducal regulation of 1 February 2010.

Those legal updates focus on the risk-based approach, the client acceptance process, the expected documentation at client file level, beneficial owner identification and ongoing due diligence. It should come as no surprise that the pressure is not letting up, as the following highlights illustrate.

Two layers of due diligence measures apply to investment fund distribution. One is about identification and verification of the intermediary, its beneficial owner and proxies. The second layer is about conducting enhanced due diligence of the relationship with the intermediary, which is considered similar to correspondent banking. Additionally, according to the AML risk identified, it is necessary to obtain comfort on the effectiveness of the AML/CTF control framework at intermediaries.

The concept of AML risk has been enhanced by emphasising the identification, assessment and

understanding of the AML risk. In this context, materiality must be considered, pre-defined information sources must be consulted and a sub-sector risk assessment for Collective Investment Schemes must be performed from January 2020. A regular update and review of the risk assessment is expected, and the board of directors must approve a dedicated risk appetite for the professional. Finally, the investment's AML risk must be assessed annually.

Regarding CDD information, the full address is now required, including that of fund initiators and promoters. Professionals are required to challenge the beneficial ownership information collected; the national beneficial ownership register is not considered to be the sole source of information. Another key piece of information to be obtained is the source of funds, whereas corroborative information is only required in high-risk situations. Client files must be updated and/or reviewed periodically and a backlog in this area requires a clear action and follow-up plan.

The ongoing monitoring of transactions and the requirement to perform real-time blacklist screening with up-to-date systems are increasingly taking centre stage. This goes together with the need to also screen the assets invested in. It has been particularly highlighted that professionals need to register with the relevant FIU's goAML application.

Due diligence outsourcing through third parties requires clear policies, selection processes and monitoring and applies to ManCos and funds' Boards of Directors, which are delegating tasks to transfer agents or portfolio managers.

Last but not least, the CSSF could replace the AML section of the current Long Form Report by a new dedicated AML report. Professionals not having the obligation to have a Réviseur d'entreprise agréé will need to engage an independent, knowledgeable external party to assess compliance with AML rules applicable in Luxembourg, but this is subject to further clarification.

MI7 is slated for release in November 2021 but further developments are expected before that date on the AML front. Watch this space.

Hot topics

France

20 July 2020

Sustainable finance and collective investments: the AMF updates its policy on collective investments incorporating non-financial criteria

The AMF has updated the instructions related to products in order to include additional annexes and forms to be completed in the process of authorisation, preparing KIIDs or prospectuses as well as for publishing periodic information.

The Instruction Doc-2011-19 has been updated to include a specific form to be completed and provided to the AMF in the following cases:

- filing of applications for the marketing in France of a foreign UCITS or UCITS sub-fund that wishes to make non-financial criteria a key aspect of communication; or
- a product change entailing the consideration of non-financial criteria presented as a key management aspect in the Key Investor Information Document (KIID) or the UCITS' marketing materials.

France

13 August 2020

Sustainable finance and collective investment schemes: the AMF published an update of its Recommendation DOC-2020-03 regarding investor information

Given the diversity of extra-financial approaches observed, the AMF has defined general principles in order to ensure that the information communicated in relation to extra-financial criteria is clear, accurate and not misleading.

In this regard, the AMF has introduced two standards regarding the information communicated on extra-financial criteria in the context of collective investment management. The purpose is to ensure that the consideration of extra-financial criteria is proportionate.

Europe

22 July 2020

AIFMD/UCITS Directive/MMFR – Level 3 – ESMA publishes Translations of Guidelines on Liquidity Stress Testing in UCITS and AIFs

On 30 April 2018, the recommendations of the European Systemic Risk Board on liquidity and leverage risks in investment funds were published in the Official Journal of the European Union (ESRB/2017/6 – the "ESRB Recommendations").

In the Final Guidelines, ESMA decided to narrow the scope of applicable provisions to Money Market Funds ("MMFs"), focusing on those parts of the Final Guidelines not already covered in the MMFs Regulation ("MMFR"). In the event of conflict, the MMFR rules shall prevail. Concerning Exchange Traded Funds ("ETFs"), ESMA has clarified that the Final Guidelines apply in addition to the requirements of the ESMA guidelines of 2014 on ETFs and other UCITS issues (ESMA/2014/937 – the "ESMA ETF Guidelines"). Leveraged closed-ended AIFs have also been retained in the scope of the Final Guidelines.

On 16 July 2020, ESMA published the translations of the Final Guidelines into all official languages of the EU (ESMA34-39-897 — the "Translations").

Luxembourg

1 July 2020

UCITS – CSSF issues Guidelines on URR (June 2020)

Pursuant to Article 147 of the Luxembourg law of 17 December 2010 relating to undertakings for collective investment (the "2010 Law", as amended, available here), the Luxembourg Commission de Surveillance du Secteur Financier (the "CSSF") requires financial information from undertakings for collective investment in transferable securities ("UCITS") on a half-yearly basis, including their exposures to financial derivative instruments and liquidity and credit risks.

UCITS are informed by a CSSF circular letter if, based on the value of total net assets ("TNAs") and use of leverage parameters, they are subject to the light or full version of the UCITS risk reporting ("URR").

The reporting scope of the Guidelines encompasses all Luxembourg-domiciled UCITS authorised by the CSSF as at 30 June 2020, given that UCITS liquidated during the reference period are out of scope. The current URR exercise covers the half-year starting 1 January 2020 and ending 30 June 2020.

Luxembourg

20 August 2020

UCITS – CSSF issues Version 9 of FAQs concerning the 2010 Law on undertakings for collective investment

The Luxembourg Commission de Surveillance du Secteur Financier (the "CSSF") publishes answers to frequently asked questions concerning certain key aspects of the laws and regulations governing undertakings for collective investment in transferable securities ("UCITS") from a Luxembourg perspective (the "CSSF FAQs").

On 7 August 2020, the CSSF issued version 9 of its FAQs (the "CSSF FAQs V9"), adding Question 1.13 (on page 11) on whether or not loans constitute eligible investments for UCITS.

United Kingdom

2 September 2020

PRIIPs Regulation – HM Treasury issues Policy Statement on amendments to onshored PRIIPs Regime

On 23 June 2020, the UK Government, in its Financial Services Written Ministerial Statement, announced its intention to bring forward legislation to improve the functioning of the PRIIPs regime in the UK.

On 30 July 2020, HMT published a policy statement providing an update on its proposed approach to bringing forward amendments to the onshored PRIIPs Regulation to avoid consumer harm and provide the appropriate certainty to industry once the UK ceases to be bound by the EU regime (the "Policy Statement").

These amendments will enable the Financial Conduct Authority (the "FCA") to make supplementary provisions and amendments to the RTS, and provide the appropriate certainty to the industry from the end of the Transition Period.

Austria

Belgium

3 July 2020

Proposed tax measures intended to facilitate investment (COVID-19)

Background

On 23 June 2020, the Austrian Ministry of Finance released two bills in order to stimulate investment against the backdrop of COVID-19.

What's new?

These bills include tax measures such as a loss carry-back rule, an investment premium, a declining balance depreciation method, an accelerated depreciation of buildings and the reduction of the first tier wage and income tax from 25% to 20%.

The link is available here.

What's next?

PwC will keep you updated on further developments.

What is the impact for you?

For your information only.

2 July 2020

Guidelines on implementing EU directive, disclosure of cross-border arrangements (DAC6)

Background

On 26 June 2020, the Council of the Belgian tax authorities published a circular providing information about the implementation of DAC 6 legislation in Belgium.

What's new?

These guidelines introduce the interpretation and the implementation of the disclosure of cross-border arrangements (DAC 6) in Belgian legislation.

The link is available here.

What's next?

PwC will keep you updated on further developments.

What is the impact for you?

For your information only.

20 July 2020

Sustainable finance and collective investments: the AMF updates its policy on collective investments incorporating non-financial criteria

What's new?

The AMF has updated the instructions related to products in order to include additional annexes and forms to be completed in the process of authorisation, preparing KIIDs or prospectuses as well as for publishing periodic information.

The Instruction Doc-2011-19 has been updated to include a specific form to be completed and provided to the AMF in the following cases:

- filing of applications for the marketing in France of a foreign UCITS or UCITS sub-fund that wishes to make non-financial criteria a key aspect of communication; or
- a product change entailing the consideration of non-financial criteria presented as a key management aspect in the Key Investor Information Document (KIID) or the UCITS' marketing materials.

The form is accessible (only in French) on the AMF website:

https://www.amf-france.org/sites/default/files/2020-07/20._doc-2011-19_annexe_xx_-vf1_commercialisation-en-france-de-fonds-etrangers-avec-prise-en-compte-de-criteres-extra-financiers_0.pdf

For more information in this regard, the form to be filled in is available here (only in French):

https://www.amf-france.org/fr/formulaires-et-declarations/opcvm-fonds-dinvestissement/opcvm

What is the impact for you?

For your information only.

13 August 2020

Sustainable finance and collective investment schemes: the AMF published an update of its Recommendation DOC-2020-03 regarding investor information

What's new?

Given the diversity of extra-financial approaches observed, the AMF has defined general principles in order to ensure that the information communicated in relation to extra-financial criteria is clear, accurate and not misleading.

In this regard, the AMF has introduced two standards regarding the information communicated on extra-financial criteria in the context of collective investment management. The purpose is to ensure that the consideration of extra-financial criteria is proportionate.

The first standard should be considered when extra-financial criteria take a central place and become a key element of any communicated legal documentation of the Fund (e.g. Prospectus or KIID) or any marketing material. The second standard is taken into consideration when communication on these criteria is reduced, meaning that the extra-financial information is not the key element of the product characteristics. In any case, communication should be brief, proportionate and balanced through the documentation of the fund.

Through the Recommendation, the AMF has also clarified the consideration of extra-financial criteria for certain approaches. The aim is to give clear guidance on the significant commitment to other approaches based on non-financial indicators (for instance: greenhouse gas emissions or gender equality).

The updated recommendation also emphasises the way the policy related to controversy management and shareholder engagement should be formalised.

In terms of implementation, the Recommendation applies immediately to new collective investments, changes to existing collective investments and new marketing notifications to the AMF in France of a foreign UCI. For existing products as at 11 March 2020, the update must be done at the latest by 10 March 2021. For new collective investments and existing products registered in France between 12 March 2020 and 27 July 2020, the update must be done by 30 September 2020.

Furthermore, this Recommendation may be re-evaluated following the outcome of the work related to the delegated acts of the European regulation.

For more information in this regard, the AMF Recommendation DOC-2020-03 can be downloaded

here: https://doctrine.amf-france.org/en_US/Reglementation/Doctrine/Doctrine-list/Doctrine?docId=workspace%3A%2F%2FSpacesStore%2F138e8494-3731-476e-a7da-7bf79200c1a2&category=II+-+Investment+products&docVersion=2.0&langSwitch=true&docVersion=2.2&langSwitch=true

What is the impact for you?

For your information only.

24 August 2020

Guidelines and forms on exemption from WHT on income distributed by French companies to UCITS established in foreign countries.

Background

On 12 August 2020, the French tax authorities issued guidelines and forms on the exemption from withholding tax on income distributed by French companies to UCITS established in foreign countries.

What's new?

The guidelines provide details concerning conditions and reporting requirements in order to benefit from the tax exemption.

Comments on these guidelines can be submitted until 15 September 2020.

More information is available here.

What's next?

PwC will keep you updated on further developments.

What is the impact for you?

For your information only.

6 July 2020

CRD – Level 2 – EBA issues Final Draft Amending RTS and ITS on passport notifications

Background

Directive 2013/36/EU of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms has applied since 1 January 2014 (the "CRD", latest consolidated version available here). Title V of the CRD sets out requirements concerning the exercise by credit institutions of the freedom of establishment and the freedom to provide services. In this context, the CRD is supplemented by (i) Commission Delegated Regulation (EU) No 1151/2014 of 4 June 2014 on the information to be notified when exercising the right of establishment and the freedom to provide services (the "RTS on Passport Notification", available here), and (ii) by Commission Implementing Regulation (EU) No 926/2014 of 27 August 2014 laying down implementing technical standards with regard to standard forms, templates and procedures for notifications relating to the exercise of the right of establishment and the freedom to provide services (the

"ITS on Passport Notification", available here).

On 10 July 2018, the EBA published its report on the peer review of the RTS on Passport Notification which identified several areas of modifications that would improve the quality and consistency of passport notifications (the "Report", available here).

On 13 November 2019, the EBA launched a consultation on the review of the RTS and ITS on Passport Notification (EBA-CP-2019-12 – the "Consultation", available here). The Consultation ended on 13 February 2020.

What's new?

On 18 June 2020, mostly on the basis of the Report and on the Consultation, the EBA published its final draft amending RTS (EBA/RTS/2020/06) and ITS (EBA/ITS/2020/03) on passport notifications (together the "Final Draft").

The Final Draft contains a revised version of both the RTS and ITS on Passport Notification, including the following material changes focusing on the quality and the clarity of the information to be provided by the credit institutions to their home competent authority in the passport notification:

- Requirement to indicate the intended start date of each passported activity, for both the branch and the services passport notification, as accurately as possible;
- Express differentiation between the first notification and the notification of changes in the branch particulars;
- Additional granularity in relation to the financial plan with regard to the branch notification only; and
- Express requirement, in case of communication of the branch planned termination, of a statement by the credit institution indicating the measures that have been or that are being undertaken to ensure that it will no longer hold deposits or repayable funds from the public through the branch after the latter termination.

For further information, the Final Draft is available here.

What's next?

The amended version of the RTS and ITS on Passport Notification will be submitted by the EBA to the European Commission for endorsement before it is published in the Official Journal of the European Union (the "OJEU").

What is the impact for you?

For your information only.

6 July 2020

CRR/COVID-19 – Level 2 – Temporary Commission Delegated Regulation 2020/866 amending Annex to RTS for prudent valuation published in the OJEU

Background

Regulation (EU) 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms has applied since 1 January 2014 ("the CRR", available here). For ease of reading, the latest consolidated text of the CRR is available here.

The CRR provides for the adoption of various delegated and implementing acts (the "Delegated and Implementing Acts", available here). They include Commission Delegated Regulation (EU) 2016/101 supplementing the CRR with regard to regulatory technical standards ("RTS") for prudent valuation under Article 105(14) of CRR ("Delegated Regulation 2016/101", available here). Delegated Regulation 2016/101 specifies how additional valuation adjustments ("AVAs"), which are designed to ensure that institutions prudently value their fair-valued financial instruments, should be calculated in accordance with Articles 34 and 105 of the CRR. The prudent value is the value at which institutions are 90% confident that they will exit a position based on the applicable market conditions at the time of the assessment.

In response to the COVID-19 pandemic, the European Banking Authority has published a number of communications on actions to mitigate its impact on the EU banking sector (the "EBA Response to COVID-19", available here). On 22 April 2020, the EBA published its final draft RTS on prudent valuation under Article 105(14) of CRR (EBA/RTS/2020/04 — the "Final Draft RTS", available here).

On 28 May 2020, the European Commission adopted the Final Draft RTS in the form of a Commission delegated regulation amending Delegated Regulation 2016/101 (C(2020) 3428 final – the "Commission Delegated Regulation", available here), together with its annex laying down the formulae to be used for the purpose of aggregating AVAs (the "Annex", available here). The Commission Delegated Regulation shall introduce a temporary adjustment that will increase the aggregation factor used to calculate the total AVA amount under the so-called "core approach" from 50% to 66% until 31 December 2020.

What's new?

On 25 June 2020, the Commission Delegated Regulation was published in the OJEU (t "Delegated Regulation 2020/866").

In this context, Article 1 of Delegated Regulation 2020/866 provides that the Annex to the Delegated Regulation 2020/866 (“Formulae to be used for the purpose of aggregative AVAs under Article 9(6), Article 10(7) and Article 11(7) [of the Delegated Regulation 2016/101]”) shall replace the Annex to the Delegated Regulation 2016/101.

For further information, Delegated Regulation 2020/866 is available here.

What’s next?

As a matter of urgency, Delegated Regulation 2020/866 shall enter into force and apply from 26 June 2020.

With reference to the above-mentioned formulae, institutions shall set the aggregation factor “α” at 66 % until 31 December 2020, after which they shall set the aggregation factor at 50 %.

What is the impact for you?

For your information only.

---

15 July 2020

Brexit – Level 2 – Commission publishes Revised Stakeholder Notice on asset management

Background

On 31 January 2020 at midnight (Brussels time), the United Kingdom of Great Britain and Northern Ireland (the “UK”) withdrew from the EU (i.e. “Brexit”). The arrangements for the withdrawal are set out in the agreement (the “Withdrawal Agreement”, available here) on the withdrawal of the UK from the EU and the European Atomic Energy Community (“Euratom”) negotiated and concluded in accordance with Article 50 of the Treaty on EU (the “TEU”, available here).

The Withdrawal Agreement entered into force on 1 February 2020. To ensure legal certainty and continuity as well as time to negotiate the future EU-UK relationship, the Withdrawal Agreement provides for a transition period during which the UK continues to apply EU law but is no longer represented in the EU institutions (the “Transition Period”). The Transition Period will end on 31 December 2020.

During the Brexit negotiations, the EU Commission (the “Commission”) published sector-specific stakeholder notices on a variety of topics (the “Notices”, available here). On 8 February 2018, the Commission published one such stakeholder notice on the legal repercussions and practical consequences that Brexit will have on asset management (the “Initial Notice”, available here). The Commission has in the meantime published revised sector-specific stakeholder notices (the “Revised Notices”, available here).

The section below refers to the following EU directives:

- Directive 2009/65/EC of the European Parliament (the “Parliament”) and of the Council on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (the “UCITS Directive”, latest consolidated version available here); and
- Directive 2011/61/EU of the Parliament and the Council on Alternative Investment Fund Managers (the “AIFMD”, latest consolidated version available here).

What’s new?

On 7 July 2020, the Commission published a revised stakeholder notice on the legal repercussions and practical consequences that the end of the Transition Period will have on asset management (the “Revised Notice”).

The Commission underlines in the Revised Notice, which replaces the Initial Notice, that after the end of the Transition Period the EU rules in the field of asset management – in particular the UCITS Directive and the AIFMD – will no longer apply to the UK. Most importantly, as a consequence thereof, the Revised Notice provides the following:

- Regarding UK asset management activity:

- Entities authorised by the UK competent authorities to manage collective investment undertakings in accordance with the UCITS Directive and the AIFMD (“UK-authorised entities”) will lose their “EU passport” and will thus be treated as third-country AIF managers (“AIFMs”). This means that UK-authorised entities will no longer be able to manage funds and market funds in the EU on the basis of their current authorisations;
- All collective investment undertakings registered or authorised in the UK will become non-EU AIFs (“non-EU AIFs”);
- The third-country passport regime in the AIFMD has never been activated;
- Member States (“MS”) may allow AIFMs who are not established and authorised in the EU to market AIFs exclusively within their own territory under National Private Placement regimes (“NPPRs”);
- UCITS management companies or AIFMs authorised by EU competent authorities in accordance with Article 6 of the UCITS Directive or Article 6 of the AIFMD, which are subsidiaries of UK-authorised entities, can continue to operate on the basis of their authorisation as UCITS management companies or AIFMs in the EU; and
- Branches of UK managers in the EU will be treated

as branches of non-EU AIFMs after the end of the Transition Period. Such branches will be subject to the requirements of NPPRs in the MS concerned, where available.

– Regarding EU asset management activity:

- Entities authorised by EU competent authorities in accordance with the UCITS Directive ("EU UCITS management companies") managing (former) UCITS authorised in the UK will need to obtain an authorisation according to Article 6 of the AIFMD to manage non-EU AIFs;
- AIFMs established and authorised or registered in the EU managing non-EU AIFs that are not marketed in the EU must comply with the AIFMD, except for depositary and annual report rules. In the absence of cooperation agreements for the exchange of information between EU competent authorities and the relevant third-country authorities, as required by Article 34 of the AIFMD, AIFMs established and authorised or registered in the EU may not manage and market such non-EU AIFs;
- Article 36 of the AIFMD provides that the marketing of non-EU AIFs managed by an AIFM established and authorised or registered in the EU is subject to an NPPR, which is an option for MS;
- UCITS management companies and AIFMs must take several steps to inform investors, in accordance with the rules on disclosure in the UCITS Directive and the AIFMD, of the consequences of Brexit and the end of the Transition Period;
- While the UCITS Directive and the AIFMD do not prohibit investment in assets located outside the EU, there are restrictions to fund-of-funds structures. In particular, UCITS authorised in the EU must assess the eligibility of (former) UCITS authorised in the UK;
- EU investors should review their investment criteria to assess compliance with respect to the collective investment funds they invested into after the change in the legal status of those funds (e.g. non-EU AIF instead of UCITS); and
- The delegation of certain functions to providers established in the UK may be undertaken, provided that the relevant requirements in the UCITS Directive and the AIFMD are met.

For further information, the Revised Notice is available here.

What's next?

The Commission advises UCITS management companies and AIFMs to assess the consequences of the end of the Transition Period and take appropriate action, such as:

– Obtaining an authorisation to manage non-EU AIFs (i.e. former UK UCITS or UK AIFs);

– Informing investors of the consequences of the end of the transition period; and

– Reviewing, when appropriate, the delegation of certain operational functions to providers established in the UK.

What is the impact for you?

For your information only.

---

16 July 2020

European Commission adopts Tax Package for fair and simple taxation

Background

On 15 July 2010, the European Commission (EC) adopted a new Tax Package.

What's new?

The new Tax Package aims at making taxation within the European Union "fairer, greener and fit for the modern economy, and contributing to long-term, sustainable, inclusive growth."

The EC's Tax Package consists of 3 separate but complementary proposals for fairer, simpler and modernised tax systems:

1. Action Plan for fair and simple taxation supporting the EU recovery strategy;

2. Revision of the Directive on administrative cooperation (DAC7);

3. Communication on Tax Good Governance.

More information is available here.

What's next?

PwC will keep you updated on further developments.

What is the impact for you?

For your information only.

---

17 July 2020

Brexit – Level 2 – Commission publishes Revised Stakeholder Notice on banking and payment services

Background

On 31 January 2020 at midnight (Brussels time), the United Kingdom of Great Britain and Northern Ireland

(the "UK") withdrew from the EU (i.e. "Brexit"). The arrangements for the withdrawal are set out in the agreement (the "Withdrawal Agreement", available here) on the withdrawal of the UK from the EU and the European Atomic Energy Community ("Euratom") negotiated and concluded in accordance with Article 50 of the Treaty on European Union (the "TEU", available here).

The Withdrawal Agreement entered into force on 1 February 2020. To ensure legal certainty and continuity as well as time to negotiate the future EU-UK relationship, the Withdrawal Agreement provides for a transition period during which the UK continues to apply EU law but is no longer represented in the EU institutions (the "Transition Period"). The Transition Period will end on 31 December 2020.

During the Brexit negotiations, the EU Commission (the "Commission") published sector-specific stakeholder notices on a variety of topics (the "Notices", available here). On 8 February 2018, the Commission published one such stakeholder notice on the legal repercussions and practical consequences that Brexit will have on banking and payment services (the "Initial Notice", available here). The Commission has in the meantime published revised sector-specific stakeholder notices (the "Revised Notices", available here).

The section below refers to the following EU legislation:

– Directive 2013/36/EU of the European Parliament (the "Parliament") and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (the "CRD", available here);

– Regulation (EU) No 575/2013 of the Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms (the "CRR", available here);

– Directive 2014/49/EU of the Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (the "DGSD", available here);

– Directive 2014/59/EU of the Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms (the "BRRD", available here);

– Directive (EU) 2015/2366 of the Parliament and of the Council of 25 November 2015 on payment services in the internal market (the "PSD", available here);

– Regulation (EC) No 924/2009 of the Parliament and of the Council of 16 September 2009 on cross-border payments in the Community (the "CBPR", available here);

– Directive 2014/92/EU of the Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (the "PAD", available here); and

– Directive 2009/110/EC of the Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions (the "e-Money Directive", available here).

What's new?

On 7 July 2020, the Commission published a revised stakeholder notice on the legal repercussions and practical consequences that the end of the Transition Period will have on banking and payment services (the "Revised Notice").

The Commission underlines in the Revised Notice, which replaces the Initial Notice, that after the end of the Transition Period the EU legislation in the field of banking and payment services – in particular the CRD, CRR, DGSD, BRRD, PSD, CBPR, PAD, and the e-Money Directive – will no longer apply to the UK.

In this context, the Commission lays out in the Revised Notice the situations which will be directly or indirectly affected by the end of the application of the above-mentioned EU legislation, such as:

– Regarding authorisations:

- The entities authorised by UK competent authorities ("UK-authorised entities") providing banking and payment service and/or e-money services;
- The UK-authorised entities which have established branches in EU Member States ("MS"); and
- The entities authorised by the competent authorities in the EU ("EU-authorised entities"), including their branches.

– Regarding arrangements and exposures:

- The arrangements which may affect the ability of EU-authorised entities to have an autonomous risk management and control framework; and
- The prudential treatment of exposures to third parties established in the UK.

– Regarding contracts:

- The contracts between parties established in the EU and in the UK.

– Regarding consumer protection for payments and bank accounts:

- The transfer of funds from the UK to the EU in the form of credit transfers and direct debits in euros;
- The retention of bank accounts with UK-authorised entities and/or their branches by EU consumers; and

- The possibility for EU consumers to ask their bank to help them open a bank account in the UK.

For further information, the Revised Notice is available here.

What's next?

The Commission advises financial service providers in the field of banking, payment and/or e-money services, and in particular those offering or receiving cross-border services to or from the UK to (i) assess the impact of the end of the Transition Period, (ii) duly inform their EU customers and regulators or public authorities and (iii) take appropriate action in a timely fashion, including the potential transfer of assets and/or activities to the EU to ensure adequate protection of the EU banks, their customers and their funds.

Further information concerning banking and payment services, including relevant updates, can be found on the website of the Commission on banking and finance (available here).

What is the impact for you?

For your information only.

17 July 2020

AML/CFT – Law establishing a Register of Fiduciaries and Trusts enters into force on 17 July 2020

Background

Directive (EU) 2015/849 of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing ("ML/TF") has applied since 26 June 2017 ("AMLD IV", available here).

The Luxembourg law of 13 January 2018, which transferred certain AMLD IV provisions into Luxembourg legislation, entered into force (the "AMLD IV Law", available here only in French) on 18 February 2018. The latest CSSF coordinated version of the Luxembourg law of 12 November 2004 on the fight against ML/TF (the "2004 Law", as amended) is available here.

On 6 December 2017, the Luxembourg Government submitted bill 7216 establishing the register of "express" trusts ("Bill 7216", available here only in French) to the Luxembourg Parliament in order to transfer Article 31 of AMLD IV into Luxembourg legislation.

On 9 July 2018, directive (EU) 2018/843 of the European Parliament and of the Council amending AMLD IV entered into force ("AMLD V", available here). AMLD V applies from 10 January 2020. The main changes introduced by AMLD V involve: (i) broadening access to information on beneficial owners ("BOs"), improving transparency in the ownership of companies and trusts; (ii) addressing risks linked to prepaid cards and virtual currencies; (iii) cooperation between Financial Intelligence Units ("FIUs"); and (iv) improved checks on transactions involving high-risk third countries. Consequently, Bill 7216 was split into the following 2 bills:

– "Bill 7216A" (available here only in French) relating to the information to be obtained and kept by trustees and transferring Article 31 of AMLD IV into Luxembourg legislation; and

  - The Luxembourg law of 10 August 2018 concerning the information to be obtained and kept by trustees and transferring Article 31 of AMLD IV into Luxembourg legislation was published in the Memorial A702 (the "Trustees Law", available here only in French) on 21 August 2018; and
  - The Trustees Law entered into force on 25 August 2018.

– "Bill 7216B" (available here only in French) establishing the register of "express" trusts in accordance with AMLD IV/V (Article 1(42) of AMLD V provides that registers mentioned under Article 31 of AMLD IV shall be set up by 10 March 2020).

  - On 23 October 2019, the Luxembourg Government submitted amending document 7216B/03 to the Luxembourg Parliament (the "Document", available here only in French). According to the explanatory memorandum of the Document, the purpose of the proposed amendments is to make the necessary changes to Bill 7216B to ensure the transfer of Article 1(16) of AMLD V amending Article 31 of AMLD IV into Luxembourg legislation. In this context, the Luxembourg Government proposes to repeal the Trustees Law, to avoid having 2 separate national laws transferring the same article into Luxembourg legislation, and to insert its provisions into Bill 7216B while reflecting the amendments introduced by AMLD V.

What's new?

On 1 July 2020, the Luxembourg Parliament voted on Bill 7216B, as amended at first reading (the "Vote", available here only in French).

On 10 July 2020, the Luxembourg Conseil d'État (the "CE") waived the second constitutional vote on the adopted Bill 7216B (No.7216B/16 – the "Waiver", available here only in French).

On 13 July 2020, the Luxembourg law of 10 July 2020 transferring Article 31 of AMLD IV, amending Regulation (EU) No 648/2012 and repealing Directive 2005/60/EC and Commission Directive 2006/70/EC, as amended by AMLD V amending AMLD IV and Directives 2009/138/EC and 2013/36/EU into Luxembourg legislation, was published

in Memorial A No.581 (the "Law establishing a Register of Fiduciaries and Trusts", available here only in French).

The Law establishing a Register of Fiduciaries and Trusts covers the following main points: obtaining and retaining information on BOs by fiduciaries and trustees (i.e. Chapter 2), the establishment of the register (i.e. Chapter 3), the entry and retention of information in the register (i.e. Chapter 4), and access to the register (i.e. Chapter 5). It should be noted that, in accordance with Article 35 of the Law establishing a Register of Fiduciaries and Trusts, the Trustees Law has been repealed.

What's next?

The Law establishing a Register of Fiduciaries and Trusts will enter into force on 17 July 2020.

What is the impact for you?

For your information only.

20 July 2020

Brexit – Level 2 – European Commission publishes Revised Stakeholder Notice on markets in financial instruments

Background

On 31 January 2020 at midnight (Brussels time), the United Kingdom of Great Britain and Northern Ireland (the "UK") withdrew from the EU (i.e. "Brexit"). The arrangements for the withdrawal are set out in the agreement (the "Withdrawal Agreement", available here) on the withdrawal of the UK from the EU and the European Atomic Energy Community ("Euratom") negotiated and concluded in accordance with Article 50 of the Treaty on European Union (the "TEU", available here).

The Withdrawal Agreement entered into force on 1 February 2020. To ensure legal certainty and continuity as well as time to negotiate the future EU-UK relationship, the Withdrawal Agreement provides for a transition period during which the UK continues to apply EU law but is no longer represented in the EU institutions (the "Transition Period"). The Transition Period will end on 31 December 2020.

During the Brexit negotiations, the EU Commission (the "Commission") published sector-specific stakeholder notices on a variety of topics (the "Notices", available here). On 8 February 2018, the Commission published one such stakeholder notice on the legal repercussions that Brexit will have on markets in financial instruments (the "Initial Notice", available here). The Commission has in the meantime published revised sector-specific stakeholder notices (the "Revised Notices", available here).

The section below refers to the following EU legislation:

- Directive 2014/65/EU of the European Parliament (the "Parliament") and of the Council on markets in financial instruments ("MiFID II", latest consolidated version available here);
- Regulation (EU) No 600/2014 of the Parliament and the Council on markets in financial instruments ("MiFIR", latest consolidated version available here); and
- Commission Delegated Regulation (EU) 2017/565 supplementing MiFID II as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive ("DR 2017/565", latest consolidated version available here).

What's new?

On 13 July 2020, the Commission published a revised stakeholder notice on the legal repercussions and practical implications that the end of the Transition Period will have on markets in financial instruments (the "Revised Notice").

The Commission underlines in the Revised Notice, which replaces the Initial Notice, that after the end of the Transition Period the EU rules in the field of MiFID II and MiFIR investment services and activities will no longer apply to the UK. Most importantly, as a consequence thereof, the Revised Notice provides the following:

- Authorisations:

- Investment firms established and authorised by the UK competent authorities ("UK IFs") will lose their "EU passport" and will thus be treated as third-country IFs. This means that UK IFs will no longer be allowed to provide services in the EU on the basis of their current authorisations;
- EU subsidiaries (i.e. legally independent companies established in the EU and controlled by or affiliated to UK IFs) can continue to operate as EU IFs if they have obtained a MiFID II authorisation in an EU Member State ("MS"). Such EU IFs are still required to comply with MiFID II requirements;
- Branches in the EU of UK IFs will become branches of third-country IFs and will need to comply with national requirements applicable in the MS where the branch is established or with the regime set in Articles 39-41 of MiFID II where applicable. The provision of services/activities is limited to the territory of that MS;
- UK market operators/IFs operating a trading venue or execution venue will no longer benefit from the MiFID II authorisation/licence. UK-based regulated markets ("RMs"), multilateral trading facilities ("MTFs") or systematic internalisers ("SIs") will thus cease to be eligible venues for trading shares subject to

the MiFIR share trading obligation. EU counterparts can no longer undertake trades in shares subject to the share trading obligation on such UK platforms. Furthermore, UK based RMs, MTFs or organised trading facilities ("OTFs") will cease to be eligible venues for the purposes of the MiFIR derivatives trading obligation and EU counterparts will no longer be able to undertake trades on such UK platforms. While the Commission is empowered to declare third-country trading venues equivalent for the purposes of the EU share and derivatives trading obligations, the assessment of the UK's equivalence has not been finalised; and

- Where previously applicable, UK-based trading venues and central counterparties ("CCPs") will no longer benefit from the open and non-discriminatory access to EU trading venues and EU CCPs and to EU benchmarks, respectively.

– Contracts:

- The loss of MiFID II authorisations may also impact relationships with EU clients/counterparts and may affect the ability of UK IFs to continue performing certain obligations and activities deriving from existing contracts. UK and EU IFs should assess the impact of the end of the Transition Period on their operations and identify and mitigate compliance risks.

– Other aspects:

- The outsourcing of certain operational functions to UK IFs may be undertaken only when in compliance with relevant MiFID II requirements. In particular, the outsourcing of functions related to portfolio management to UK IFs will only be permitted where the conditions under Article 32 of DR 2017/565 are met, including the requirement that cooperation arrangements between competent authorities of MS and the UK are in place;
- In accordance with MiFID II obligations on disclosure of information to clients, IFs are required to provide clients or potential clients with accurate disclosure — in good time and in any case before clients are bound by any contract — on the impact on the provision of services and investors' rights that may emerge from the end of the Transition Period including the upcoming loss of their MiFID II authorisation; and
- According to Article 59 MiFID II, the provision of data reporting services requires an authorisation by the competent authority of the home MS. UK-based data reporting service providers which have not obtained a MiFID II authorisation by a competent authority established in a MS will have to cease to serve EU markets.

For further information, the Revised Notice is available here.

What's next?

The Commission advises IFs to assess the consequences of the end of the Transition Period and take appropriate action, such as:

– Ensuring the necessary authorisations are in place and that the necessary actions for any relocation, corporate reorganisation or contractual adaptations have been taken;

– Duly informing their clients and counterparts of the implications of the end of the Transition Period on their business and contractual relationships and of any impact of related measures IFs have taken or intend to take; and

– Ensuring that business adaptations and investment strategies are ready for the lack of equivalence decisions by the end of the Transition Period.

What is the impact for you?

For your information only.

22 July 2020

AIFMD/UCITS Directive/MMFR – Level 3 – ESMA publishes Translations of Guidelines on Liquidity Stress Testing in UCITS and AIFs

Background

On 30 April 2018, the recommendations of the European Systemic Risk Board on liquidity and leverage risks in investment funds were published in the Official Journal of the European Union (ESRB/2017/6 – the "ESRB Recommendations", available here).

In particular, ESRB Recommendation C provides that "in order to promote supervisory convergence, the European Securities and Markets Authority (the "ESMA") is recommended to develop guidance on the practice to be followed by managers for the stress testing of liquidity risk for individual alternative investment funds ("AIFs") and undertakings for collective investments in transferable securities ("UCITS")". The ESMA guidance should include: (i) the design of liquidity stress testing ("LST") scenarios, (ii) the LST policy, (iii) considerations for the asset and liability sides of investment fund balance sheets, and (iv) the timing and frequency for individual funds to conduct LST.

ESMA was to submit guidance concerning ESRB Recommendation C to the ESRB and the Council of the EU by 30 June 2019. On 1 April 2019, ESMA closed its consultation concerning draft guidelines on LST in UCITS and AIFs (ESMA34-39-784 – the "Consultation", available here). The purpose of the Consultation was twofold, namely: (i) providing managers and depositaries with a

set of minimum standards when executing/overseeing LST in AIFs and UCITS across the EU; and (ii) promoting supervisory convergence in the way the national competent authorities ("NCAs") should supervise LST across the EU.

On 2 September 2019, taking into account the responses received to the Consultation (the "Responses", available here), ESMA issued its final report entitled "Guidelines on LST in UCITS and AIFs" (ESMA34-39-882 – the "Final Report", available here). The text of the "Final Guidelines" is set out in Annex III to the Final Report.

In the Final Guidelines, ESMA decided to narrow the scope of applicable provisions to Money Market Funds ("MMFs"), focusing on those parts of the Final Guidelines not already covered in the MMFs Regulation ("MMFR", available here). In the event of conflict, the MMFR rules shall prevail. Concerning Exchange Traded Funds ("ETFs"), ESMA has clarified that the Final Guidelines apply in addition to the requirements of the ESMA guidelines of 2014 on ETFs and other UCITS issues (ESMA/2014/937 – the "ESMA ETF Guidelines", available here). Leveraged closed-ended AIFs have also been retained in the scope of the Final Guidelines.

In the Final Report, it is reminded that:

- ESMA recommends a quarterly frequency for LST and recognises that there are situations where a higher or lower frequency is necessary. While not making Reverse Stress Testing ("RST") mandatory, the Final Guidelines recognise the benefits of using RST especially for funds engaged in investment strategies which expose them to low-probability risks with a potentially high impact; and
- The Final Guidelines should be adapted to the nature, scale and complexity of the fund. Besides, the topic of LST overlaps with other aspects of liquidity management in funds (e.g. managing liquid and less liquid assets, diversification and implementing measures). The Final Guidelines are not intended to provide comprehensive guidance regarding liquidity management issues outside the scope of LST. Given that LST is already required annually on in-scope AIFs, ESMA anticipates that the Final Guidelines would lead to "limited costs" for managers, focused on those UCITS managers which do not already undertake LST.

What's new?

On 16 July 2020, ESMA published the translations of the Final Guidelines into all official languages of the EU (ESMA34-39-897 – the "Translations").

The Translations are available here.

What's next?

Within 2 months of the Translations being published, i.e. by 16 September 2020, each NCA to which the Final Guidelines apply is required to notify ESMA whether it (i) complies, (ii) does not comply, but intends to comply, or (iii) does not comply and does not intend to comply with the Final Guidelines.

If an NCA does not comply or does not intend to comply with the Final Guidelines, it must also notify ESMA by 16 September 2020 of its reasons for not complying.

Financial market participants are not required to report whether they comply with the Final Guidelines.

The Final Guidelines shall apply from 30 September 2020.

What is the impact for you?

For your information only.

---

22 July 2020

Sustainable Finance – Level 2 – Commission adopts Delegated Acts supplementing the Benchmark Regulation

Background

On 8 March 2018, the European Commission (the "Commission") issued its "Action Plan: Financing Sustainable Growth" (COM(2018) 97 final the "Action Plan", available here). In the Action Plan, the Commission announced forthcoming measures to enhance the environmental, social and governance ("ESG") transparency of benchmark methodologies and an initiative to put forward standards for the methodology of low-carbon benchmarks in the EU.

In July 2018, the Commission set up a technical expert group on sustainable finance (the "TEG") to assist it in developing (i) an EU taxonomy to determine whether an economic activity is environmentally sustainable, (ii) an EU green bond standard ("EU GBS"), (iii) methodologies for EU climate benchmarks and disclosures for benchmarks, and (iv) guidance to improve corporate disclosure of climate-related information. The mandate of the TEG has been extended until 30 September 2020.

On 30 September 2019, the TEG published its final report on EU climate benchmarks and benchmark ESG disclosures (the "Final Report", available here). The Final Report recommends:

- A list of minimum technical requirements for the methodologies of the "EU Climate Transition" and "EU Paris-aligned" benchmarks (altogether "EU climate benchmarks"). Such would help investors

who wish to adopt climate-conscious investment strategies make informed decisions as well as address the risks of greenwashing; and

- A set of ESG disclosure requirements for benchmark administrators, including the standard format to be used for reporting.

On 20 December 2019, the TEG published a handbook on EU climate benchmarks and benchmark ESG disclosures (the "Handbook", available here). The aim of the Handbook is to clarify the recommendations put forward by the TEG in its Final Report and to respond to frequently asked questions from the market.

Regulation (EU) 2016/1011 of the European Parliament (the "Parliament") and of the Council on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds (the "Benchmark Regulation" or "BMR", available here) entered into force on 30 June 2016 and applies with certain exceptions from 1 January 2018. The Benchmark Regulation, which aims to address concerns over the accuracy and integrity of benchmark indices, was amended "Regulation (EU) 2019/2089 of the Parliament and of the Council […] as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks" ("Regulation 2019/2089", available here). In particular, Regulation 2019/2089 – which entered into force on 10 December 2019 – provides new disclosure requirements in Articles 13(1)(d) and 27(2a) of the Benchmark Regulation – which apply from 30 April 2020 – with the aim to increase the comparability of benchmarks with regard to ESG factors.

The Benchmark Regulation empowers the Commission to adopt delegated and implementing acts (available here) to specify how competent authorities and market participants shall comply with the obligations laid down therein. On 8 April 2020, the Commission services launched the following consultations in relation to Regulation 2019/2089 (altogether the "3 Consultations"):

- Consultation on a draft Commission delegated regulation (EU) .../... of XXX supplementing BMR as regards the minimum content of the explanation on how ESG factors are reflected in the benchmark methodology (Ref. Ares(2020)1993799, including its annex I, available here);
- Consultation on a draft Commission delegated regulation (EU) .../... of XXX supplementing BMR as regards the explanation in the benchmark statement of how ESG factors are reflected in each benchmark provided and published (Ref. Ares(2020)1993775, including its annexes I and II, available here); and
- Consultation on a draft Commission delegated regulation (EU) .../... of XXX supplementing BMR as regards minimum standards for EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks (Ref. Ares(2020)1993773, available here).

What's new?

On 17 July 2020, based on the 3 Consultations, the Commission adopted and published the following delegated regulations and annexes (altogether the "Adopted Delegated Acts"):

- Commission delegated regulation supplementing BMR as regards the minimum content of the explanation on how ESG factors are reflected in the benchmark methodology ("DR 1", available here) and the annex thereto (the "Annex to DR 1", available here);
- Commission delegated regulation supplementing BMR as regards the explanation in the benchmark statement of how ESG factors are reflected in each benchmark provided and published ("DR 2", available here) and the annex thereto (the "Annex to DR 2", available here); and
- Commission delegated regulation supplementing BMR as regards minimum standards for EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks ("DR 3", available here).

The Adopted Delegated Acts set out (i) minimum technical requirements that a benchmark needs to include if it is to be labelled as an EU climate benchmark, and (ii) a number of ESG disclosure requirements for benchmark administrators. More specifically, for benchmarks to be labelled as an EU climate benchmark, the TEG provides that the following conditions must be met: (i) their allocation to the sectors that highly contribute to climate change should not be less than the exposure of their underlying investable, (ii) the greenhouse gas ("GHG") intensity will have to be significantly lower than that of the investable universe, (iii) they will have to reduce their carbon emissions from one year to the other, and exclude assets that significantly harm ESG objectives.

What's next?

The Commission informs that it will publish the final texts of the Adopted Delegated Acts soon. The Adopted Delegated Acts will further contribute to an increased level of transparency and comparability of financial products offered to the public.

What is the impact for you?

For your information only.

3 August 2020

PRIIPs Regulation – ESAs publish their Letter on outcome of review of Delegated Regulation on presentation and contents of KID

Background

Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents ("KIDs") for packaged retail and insurance-based investment products ("PRIIPs") has applied since 1 January 2018 (the "PRIIPs Regulation", available here).

The European Commission (the "Commission") is empowered to adopt delegated and implementing acts to specify how competent authorities and market participants shall comply with the obligations laid down in the PRIIPs Regulation (the "Implementing and Delegated Acts", available here). They include the Commission Delegated Regulation (EU) 2017/653 specifying the presentation, content, review and revision of KIDs and the conditions for fulfilling the requirement to provide such documents ("Delegated Regulation 2017/653", available here).

From 8 November 2018 to 6 December 2018, the European Supervisory Authorities (the "ESAs") consulted on draft amendments to Delegated Regulation 2017/653 (CP 2018 60 —"Consultation Paper 1", available here). On 8 February 2019, the ESAs published their final report following up on Consultation Paper 1, stating that the feedback indicated that, overall, stakeholders did not support the proposed amendments and the ESAs decided to defer their review and work on more substantive revisions during 2019 (JC2019 6.2 — the "Final Report Following Consultation Paper 1", available here).

From 16 October 2019 to 13 January 2020, the ESAs further consulted on amendments to existing rules underpinning the KID for PRIIPs (JC 2019 63, "Consultation Paper 2", available here).

The aims of this review were to address the main regulatory issues that have been identified since the implementation of the KID, in particular regarding the information on performance and costs, and to allow the appropriate application of the KID by undertakings for the collective investment in transferable securities ("UCITS").

A draft final report following Consultation Paper 2 was submitted to 3 Boards of Supervisors of the ESAs (the "3 Boards") for their approval in June 2020 (the "Draft Final Report", available here).

What's new?

On 21 July 2020, the ESAs published their letter to the Commission informing about the outcome of the review by the ESAs of the PRIIPs KID following Consultation Paper 2 (ESAs 2020 19 — the "Letter"). For transparency purposes, the ESAs have included the Draft Final Report as an Annex to the Letter.

The Letter informs that:

- The ESAs considered that the Draft Final Report contained balanced and proportionate final proposals, which would allow the ESAs to meet their main policy objectives, while remaining in line with the PRIIPs level 1 framework (the PRIIPs Regulation).
- The draft regulatory technical standards (the "Draft RTS") included in the Draft Final Report were adopted at the European Banking Authority's (the "EBA") and the European Securities and Markets Authority's (the "ESMA") Boards on the basis of qualified majority voting.
- At the European Insurance and Occupational Pensions Authority's (the "EIOPA") Board, although a large number of members agreed with the Draft RTS, they did not receive the support of a qualified majority.
- Those Board members that did not support the Draft RTS, generally argued that a partial revision of Delegated Regulation 2017/653 is not appropriate at this stage, prior to a comprehensive review of PRIIPs Regulation as envisaged in its Article 33. A number of Board members also indicated that for investment funds, they would prefer the past performance graph from the UCITS key investor information document to be included in the PRIIPs KID itself, rather than in a separate publication. As they have indicated in the Draft Final Report, the ESAs reiterate that this would also have been their preference.

The Letter is available here.

What's next?

Given that the Draft RTS were not adopted by the 3 Boards, the ESAs are not in a position to formally submit them to the Commission.

What is the impact for you?

For your information only.

3 August 2020

Banking Supervision/COVID-19 – Level 3 – ECB adopts Recommendation 2020/35 on dividend distributions until 1 January 2021

Background

On 30 March 2020, the recommendation of the European Central Bank (the ""ECB"") of 27 March 2020 on dividend distributions during the COVID-19 pandemic was published in the OJEU (""Recommendation 2020/19"", available here). In Recommendation 2020/19, the ECB considered appropriate that at least until 1 October

2020 no dividends are paid out and no irrevocable commitment to pay out dividends is undertaken by credit institutions for the financial years 2019 and 2020 and that credit institutions refrain from share buybacks aimed at remunerating shareholders.

Given the temporary nature of this measure, the ECB has undertaken work to further evaluate the economic situation and consider whether further suspension of dividends is advisable after 1 October 2020.

What's new?

On 27 July 2020, the ECB adopted its recommendation 2020/35 on dividend distributions during the COVID-19 pandemic and repealing Recommendation 2020/19 (““Recommendation 2020/35”“).

Recommendation 2020/735 is addressed to significant supervised entities and significant supervised groups and to the national competent authorities (““NCAs”“) with regard to less significant supervised entities and less significant supervised groups, as defined under the ““SSM Framework Regulation”“ (available here). The NCAs are expected to apply Recommendation 2020/735 to such entities and groups, as deemed appropriate.

In Recommendation 2020/735, the ECB recommends that until 1 January 2021 no dividends are paid out and no irrevocable commitment to pay out dividends is undertaken by credit institutions for the financial years 2019 and 2020 and that credit institutions refrain from share buy-backs aimed at remunerating shareholders.

For further information, Recommendation 2020/35 is available here.

The FAQ on ECB supervisory measures in reaction to the COVID-19 pandemic (including Section 4 entitled ““Restrictions on dividends and variable remuneration”“), as last updated to reflect Recommendation 2020/35 on 28 July 2020, is available here.

What's next?

Recommendation 2020/35 repeals Recommendation 2020/19 from 27 July 2020. Credit institutions that are unable to comply with Recommendation 2020/735, because they consider themselves legally required to pay out dividends should immediately explain the underlying reasons to their joint supervisory team. Credit institutions that intend to pay out dividends or undertake an irrevocable commitment to pay out dividends to their parent institution, parent financial holding company or parent mixed financial holding company which is established in a Member State that is not a participating Member State should contact their joint supervisory team to determine whether such dividend pay-outs or irrevocable commitments to make a dividend pay-out are appropriate.

The ECB intends to decide in Q4 2020 on the approach to be followed after 1 January 2021, considering the economic environment, the stability of the financial system and the level of certainty around capital planning.

As noted in the dedicated “Press Release” dated 28 July 2020 (available here), the ECB continues to encourage banks to use their capital and liquidity buffers for lending purposes and loss absorption. In any case, the ECB commits to “allow banks to operate below the P2G and the combined buffer requirement until at least end-2022, and below the LCR until at least end-2021, without automatically triggering supervisory actions”.

On 28 July 2020, the ECB sent a letter entitled “Remuneration policies in the context of the COVID-19 pandemic” to the CEOs of significant institutions, asking them to be extremely moderate with regard to variable remuneration payments, e.g. by reducing the overall amount of variable pay (SSM-2020-0315 – the “ECB Letter”, available here).

At Luxembourg level, the Commission de Surveillance du Secteur Financier (the “CSSF”) updated its questions and answers 13 in its COVID-19 FAQ to reflect Recommendation 2020/25 on 30 July 2020 (the “CSSF FAQ”, available here). On the same day, the CSSF published the circular letter addressed to all credit institutions that are not significant institutions under the SSM, which provides an update of the CSSF policy on restrictions of dividend distributions and share buybacks, as well as guidance on the CSSF's expectations with regard to remuneration practices (the “CSSF Letter”, available here).

What is the impact for you?

For your information only.

10 August 2020

MiFID II/MIFIR – Level 3 – ESMA publishes Updated Opinion on post-trade transparency regarding third-country trading venues

Background

Directive 2014/65/EU and regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments has applied since 3 January 2018 (“MiFID II” and “MiFIR”, respectively, available here and here).

The post-trade disclosure requirements in Articles 20 and 21 of MiFIR require EU investment firms to make information on transactions in financial instruments traded on a trading venue public through approved publication arrangements (“APAs”). However, Articles 20 and 21 of MiFIR do not clarify whether this obligation also applies to

transactions concluded on third-country trading venues ("TCTVs").

Market participants and competent authorities ("CAs") have called upon the European Securities and Markets Authority ("ESMA") to provide guidance on the treatment of those transactions, in particular, on those TCTVs that are subject to transparency provisions that are similar to the post-trade transparency requirements applicable to trading venues in the EU as set out in Articles 6(1) and 10(1) of MiFIR.

On 31 May 2017, ESMA published its Opinion on the circumstances under which transactions executed on TCTVs will be subject to the MiFIR post-trade transparency rules (ESMA70-154-165 – the "Opinion"). Following the publication of the Opinion, ESMA received requests to assess more than 200 TCTVs. ESMA was not in a position to assess all those TCTVs ahead of the entry into force of MiFID II/MiFIR on 3 January 2018.

On 3 June 2020, ESMA published an updated version of the Opinion (ESMA70-154-165 – "Updated Opinion 1") which provides that EU investment firms trading on a TCTV are not required to make transactions public in the EU via an APA provided that a TCTV meets the following criteria (the "Criteria"):

- It operates a multilateral system;
- It is subject to authorisation in accordance with a legal and supervisory framework of the third country;
- It is subject to supervision and enforcement on an ongoing basis in accordance with the legal and supervisory framework of the third country by a CA that is a full signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information ("MMoU"); and
- It has a post-trade transparency regime in place which ensures that transactions concluded on that trading venue are published as soon as possible after the transaction was executed or, in clearly defined situations, after a deferral period.

To this end, ESMA has published an annex on post-trade transparency (the "Annex") presenting the following outcome of its assessment of TCTVs against the Criteria: 120 out of 136 TCTVs were found to be equivalent to MiFID II/MIFIR provisions, releasing EU investment firms concluding transactions on those TCTVs from the obligation to comply with post-trade transparency requirements via an APA under Articles 20 and 21 of MiFIR.

What's new?

On 28 July 2020, following requests from market participants to assess more TCTVs, ESMA published a second updated version of the Opinion (ESMA70-154-165 – "Updated Opinion 2"), an updated version of the Annex (the "Updated Annex"), and additional guidance on the Annex (ESMA70-155-10587 — the "Guidance").

The Updated Annex consists of a list of 202 TCTVs that (partially) meet the Criteria, i.e. ESMA assessed these TCTVs either as positive or partially positive. ESMA provides in the Updated Opinion 2 that:

- An EU investment firm trading on a TCTV which has been assessed as positive is not required to make transactions post-trade transparent via an APA under Articles 20 and 21 of MiFIR;
- An EU investment firm trading on a TCTV which has been assessed as partially positive is required to make transactions for which the assessment is not positive (see Column I of the Updated Annex) post-trade transparent via an APA under Articles 20 and 21 of MiFIR by 3 October 2020; and
- An EU investment firm trading on a TCTV which is not included in the Updated Annex is required to make transactions post-trade transparent via an APA under Articles 20 and 21 of MiFIR by 3 October 2020.

For further information, Updated Opinion 2 is available here.

The Updated Annex is available here.

The Guidance is available here.

What's next?

For market participants to automatically process the list of TCTVs in the Updated Annex, ESMA has published it in CSV format.

ESMA will update the list of TCTVs on an ongoing basis. Future updates will be available on a dedicated "Web Page" (available here).

What is the impact for you?

For your information only.

---

10 August 2020

SSR/COVID-19 – Level 3 – ESMA renewing Decision requiring net short-position holders to report positions of 0.1% and above of the issued share capital published in the OJEU

Background

Regulation (EU) No 236/2012 of the European Parliament and of the Council of the EU on short selling and certain aspects of credit default swaps has applied since 1 November 2012 (the "SSR", available here). Article 28 of the SSR describes the intervention powers of the

European Securities and Markets Authority (“ESMA”) in exceptional circumstances.

On 16 March 2020, the European Securities and Markets Authority (“ESMA”) published its decision (ESMA70-155-9546 — the “ESMA Decision”, available here) which was later published in the Official Journal of the EU (the “OJEU”) on 15 April 2020 as decision (EU) 2020/525 (“Decision 2020/525”, available here).

With Decision 2020/525, ESMA required natural or legal persons with net short positions in relation to the issued share capital of companies whose shares are admitted to trading on a regulated market to notify the competent authorities details of any such position reaching, exceeding or falling below 0.1% of the issued share capital in accordance with point (a) of Article 28(1) of the SSR.

The measure imposed by Decision 2020/525 addressed the necessity for national competent authorities and ESMA to be able to monitor the net short positions that market participants have entered into in relation to shares admitted to trading on a regulated market, on account of exceptional circumstances present in financial markets.

The ESMA Decision and Decision 2020/525 stated that the ESMA Decision entered into force immediately upon its publication on ESMA’s website on 16 March 2020 and applied from that date for a period of 3 months. In accordance with Article 28(10) of the SSR, ESMA must review this measure at appropriate intervals and at least every 3 months (the “Review”).

ESMA performed the Review based on an analysis of performance indicators, including prices, volatility, credit default swaps spread indices, as well as the evolution of net short positions, especially those between 0.1 and 0.2% which has steadily increased since the entry into force of the original decision on 16 March 2020. Following this analysis, ESMA decided that it should renew the measure for an additional 3 months.

On 10 June 2020, ESMA published its decision renewing Decision 2027/525 (ESMA70-155-10189 — the “ESMA Renewing Decision”, available here). ESMA considers that its renewed measure will maintain the ability of national competent authorities to deal with any threats to market integrity, orderly functioning of markets and financial stability at an early stage, allowing them and the ESMA to timely address such threats if there are signs of market stress.

What’s new?

On 30 July 2020, the ESMA Renewing Decision was published in the OJEU as decision (EU) 2020/1123 (“Decision 2020/1123”).

Decision 2020/1123 is available here.

What’s next?

The ESMA Renewing Decision entered into force on 17 June 2020. It applies from the date of its entry into force for a period of 3 months.

The temporary transparency obligations apply to any natural or legal person, irrespective of their country of residence. They do not apply to shares admitted to trading on a regulated market where the principal venue for the trading of the shares is located in a third country, market making or stabilisation activities.

ESMA has stated that it continues to monitor developments in financial markets as a result of the COVID-19 situation in coordination with national competent authorities and that it is prepared to use its powers to ensure the orderly functioning of markets, financial stability and investor protection.

What is the impact for you?

For your information only.

---

20 August 2020

AIFMD – Level 0 – ESMA highlights priority areas for AIFMD review

Background

Directive 2011/61/EU of the European Parliament (the “Parliament”) and of the Council of the EU (the “Council”) on alternative investment fund managers (“AIFMs”) has applied since 22 July 2013 (the “AIFMD”, available here).

Directive 2009/65/EC of the Parliament and of the Council on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (“UCITS”) has applied since 30 June 2011 (the “UCITS Directive”, available here).

The European Commission (the “Commission”) has adopted implementing and delegated acts to specify how to comply with the obligations laid down in the AIFMD and the UCITS Directive (the “Implementing and Delegated Acts”, available here and here, respectively).

The Commission is required to review the application and the scope of the AIFMD according to its Article 69. In January 2019, the Commission published its report on the operation of the AIFMD (FISMA/2016/105(02)/C – the “2019 Report”, available here) and in June 2020, the Commission published its report assessing the application and scope of the AIFMD (COM(2020) 232 final – the “2020 Report”, available here).

The European Securities and Markets Authority (“ESMA”) and national competent authorities (“NCAs”) have identified areas that could be improved in the legislation

to enhance the supervision of alternative fund managers in the EU.

What's new?

On 19 August 2020, ESMA published its letter to the Commission highlighting areas to consider during the review of the AIFMD (ESMA34-32-550 – the "Letter"). The Letter contains 2 annexes:

– Annex 1 describes ESMA's proposed changes to the AIFMD framework:

- Greater harmonisation of the AIFMD and UCITS regimes;
- Clarifications with respect to delegation and substance requirements;
- Consistent availability of additional liquidity management tools throughout all EU jurisdictions;
- Leverage;
- Harmonisation of supervision of cross-border entities;
- Semi-professional investors;
- Specific framework for loan origination within the AIFMD;
- Application of depository rules to central securities depositories;
- Proportionality principle for remuneration requirements;
- External valuer liability;
- Improvements to uncertain AIFMD-related definitions;
- Convergence in treatment of the possible significant influence fund managers may exercise over the management of an issuing body;
- More electronic communication instead of paper form; and
- Studying the benefits and risks relating to depositary passports.

– Annex 2 describes ESMA's proposed changes to the AIFMD regarding the reporting regime and data use:

- Obligation to acquire a legal entity identifier ("LEI") for the manager and its funds;
- Detailed information on the composition of assets and liabilities of the fund;
- Definition of leveraged fund;
- Scope of entities in the ESMA register;
- Timeline for the NCAs to update the ESMA register;
- Reporting in percentages;
- Restrictions in the use and publication of the reported data;
- Reporting exemptions for private equity funds; and
- Requirement to report environmental, social and corporate governance metrics.

Many of the recommendations made also require consideration of changes to the UCITS legislative framework.

The Letter is available here.

What's next?

ESMA encourages the Commission to support the areas identified in the Letter in order to improve the effectiveness and soundness of the AIFMD.

What is the impact for you?

For your information only.

21 August 2020

BMR – Level 1 – Commission consults on Proposal for a Regulation amending BMR to designate the replacement for certain benchmarks in cessation (such as LIBOR)

Background

Regulation (EU) 2016/1011 of the European Parliament (the "Parliament") and of the Council on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds ("IFs") (the "BMR", latest consolidated version available here) entered into force on 30 June 2016 and applies with certain exceptions from 1 January 2018. The BMR is relevant for any IF that uses any benchmark to assess its performance, to define asset allocation of its portfolio, or to compute its performance fees.

On 28 January 2019, the UK Financial Conduct Authority (the "FCA") announced that since the London Interbank Offered Rate ("LIBOR") is no longer representative of an underlying market it will stop supporting the benchmark at the end of 2021 (the "UK FCA Press Release", available here). The FCA, which expects that LIBOR will cease shortly thereafter, provides that the preferred transition away from LIBOR will be one in which contracts that reference LIBOR are replaced or amended before fallback provisions are triggered.

On 24 July 2020, the European Commission (the "Commission") published a proposal for a regulation of the Parliament and of the Council amending the BMR as regards the exemption of certain third-]country foreign-exchange benchmarks and the designation of replacement benchmarks for certain benchmarks in cessation (COM(2020) 337 final – the "Proposal", available here).

On 24 July 2020, the Commission also published an impact assessment report on the Proposal (SWD(2020) 142 final – the "Impact Assessment", available here), as well as an executive summary of the Impact Assessment (SWD(2020) 143 final – the "Executive Summary", available here).

What's new?

On 11 August 2020, the Commission launched a consultation asking for feedback on the Proposal (the "Consultation").

For further information, the Consultation is available here.

What's next?

The Consultation is open for a minimum of 8 weeks, until 6 October 2020. All feedback received will be summarised by the Commission and presented to the Parliament and the Council with the aim of feeding into the legislative debate.

The final regulation, if adopted by the Parliament and the Council, shall enter into force on the day following that of its publication in the Official Journal of the EU (the "OJEU").

What is the impact for you?

For your information only.

26 August 2020

European Commission – Laying down rules against tax avoidance practices

Background

On 19 August 2020, the European Commission reported on the implementation of Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market as amended by Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries.

What's new?

This report is the first step in the evaluation of the impact of the ATAD and provides an overview of the implementation of the early applicable ATAD measures (interest limitation, GAAR, CFC) across Member States.

The next step will consist of the delivery of a comprehensive evaluation report of the ATAD measures, including the overview of the implementation of those ATAD measures that were not included in this report.

The report is available here.

What's next?

PwC will keep you updated on further developments.

What is the impact for you?

For your information only.

Germany

9 July 2020

No Covid-19 deferral of deadline for reporting cross-border tax arrangements

Background

On 6 June 2020, a speaker of the German Ministry of Finance made the surprise announcement that, following a decision by the Minister of Finance, Germany would not be exercising the option given in the recent EU Directive to extend the reporting deadlines for DAC 6.

What's new?

As a result of these developments, the deadlines remain unchanged under German DAC6 legislation, so that from 1 July 2020 onwards, arrangements must be reported within the 30-day reporting period; for arrangements implemented in the transitional period (first implementation step in the period from 25 June 2018 to 30 June 2020) the deadline remains 31 August 2020.

Click here for more information: Link (newsflash issued by PwC Germany).

What's next?

A Ministry of Finance circular on the application of the reporting obligation for cross-border tax arrangements is currently undergoing its final approval. It will probably be published sometime in July.

PwC will keep you updated on further developments.

What is the impact for you?

For your information only.

9 July 2020

Tax relief measures in legislation (COVID-19)

Background

On 29 June 2020, the Bundestag approved the coalition's bill for a second Corona-Tax Assistance Act as amended by the Finance Committee of the Bundestag. Immediately after the Bundestag's assent, the Bundesrat also approved the law in a special session.

What's new?

This act includes several measures such as:

- a six-month VAT reduction (19% to 16% and 7% to 5%);
- an increased threshold for tax-loss carry-backs;
- the possibility to use the declining-balance method of depreciation;
- an increased rate of eligible expenses for research tax incentive.

Further information is available here (in German).

What's next?

PwC will keep you updated on further developments.

What is the impact for you?

For your information only.

Italy

2 July 2020

Tax dispute resolution mechanisms, new mutual agreement procedures

Background

On 10 June 2020, the Italian Gazette published legislative decree no. 49/2020 entitled "tax dispute resolution mechanisms in the European Union" implementing Directive (EU) 2017/1852.

What's new?

Compared to the existing legal framework on the matter, the Directive has extended the scope of the mutual agreement procedure, providing for two significant innovations:

1. unlike what is provided for by the double tax treaties entered into by Italy, the taxpayer may present a request to set up an Advisory Commission for arbitration where an agreement has not been reached between the competent authorities, ensuring certain timeframes in the interpretation and application of the same tax treaties;

2. with respect to the European Arbitration Convention (no. 90/436/EEC), the extension of the scope of the procedure, which is no longer limited to transfer pricing and to the allocation of profits to permanent establishments, and therefore concerns – in principle – the cases covered by double tax treaties (despite particularly focusing on cases of international double taxation). Thus, this latest innovation allows the submission of complaints also to individuals and companies not belonging to multinational groups.

Further information is available here.

What's next?

PwC will keep you updated on further developments.

What is the impact for you?

For your information only.

29 July 2020

Updated Q&As issued by the Central Bank of Ireland

What's new?

UCITS:

On the July 2020, the Central Bank issued the 29th edition of the Central Bank UCITS Q&A, which includes new Q&A IDs 1095, 1096 and 1097 in relation to liquidity stress testing in UCITS.

The Q&As clarify the Central Bank's expectations in relation to liquidity stress testing (LST) in UCITS, particularly in relation to the application of the ESMA 'Guidelines on liquidity stress testing in UCITS and AIFs'. The Q&As set out that the LST policy may be documented within the UCITS Risk Management Policy, that LST should generally be carried out at least quarterly and that LST should be employed at all stages in a UCITS lifecycle, including at the design phase.

The link to the latest version of the FAQ is available here: https://www.centralbank.ie/docs/default-source/regulation/industry-market-sectors/funds/ucits/guidance/ucits-qa-29-edition.pdf?sfvrsn=2

AIFMD:

On 13 July 2020, the Central Bank issued the 34th edition of the Central Bank AIFMD Q&A, which includes new Q&A IDs 1131 and 1132 in relation to liquidity stress testing in AIFs.

The Q&As clarify the Central Bank's expectations in relation to liquidity stress testing (LST) in AIFs, particularly in relation to the application of the ESMA 'Guidelines on liquidity stress testing in UCITS and AIFs'. The Q&As set out that the Central Bank considers that LST should generally be performed at least quarterly and that LST should be employed at all stages in an AIF's lifecycle, including at the design phase

The link to the latest version of the FAQ is available here: https://www.centralbank.ie/docs/default-source/regulation/industry-market-sectors/funds/aifs/guidance/qa/aifmd-qa-34-edition.pdf?sfvrsn=2

What is the impact for you?

For your information only.

25 September 2020

Sustainable Finance/SFDR – Level 2 – ESAs issue Survey on Templates for products promoting Environmental and/or Social (E/S) characteristics until 16 October 2020

Background

On 29 December 2019, Regulation (EU) 2019/2088 of the European Parliament and of the Council on sustainability-related disclosures in the financial services sector entered into force (the "SFDR", available here). The SFDR shall mostly apply from 10 March 2021. The scope of the SFDR is "extremely broad", covering a wide range of financial products, financial market participants ("FMPs") and financial advisers ("FAs"). The SFDR's main goals are to (i) strengthen protection for end-investors, (ii) improve the disclosures to investors from various FMPs and FAs, and (iii) improve the disclosures to investors regarding financial products.

On 1 September 2020, the European Supervisory Authorities (the "ESAs") closed their consultation on draft regulatory technical standards ("RTS") with regard to the content, methodologies and presentation of disclosures pursuant to Article 2a, Article 4(6) and (7), Article 8(3), Article 9(5), Article 10(2) and Article 11(4) of the SFDR (JC 2020 16 – the "Consultation", available here). Responses to the Consultation are available here.

What's new?

On 21 September 2020, the ESAs issued a survey detailing the presentation of the information to be disclosed pursuant to Article 8(3), Article 9(5) and Article 11(4) of SFDR (the "Survey").

In line with Recital 9 of the SFDR, the ESAs propose to standardise the pre-contractual and periodic disclosures of information for financial products that promote environmental and/or social ("E/S") characteristics or have a sustainable objective. Such information would be included in existing disclosures provided for under EU sectoral legislation and provided by FMPs (e.g. AIFMs,

UCITS management companies, or credit institutions which provide portfolio management).

In particular, the ESAs invite comments (7 questions) on presentational aspects of the following 3 mock-ups (together the "Mock-Ups"), as the content of the Mock-Ups already reflects the current text of the draft RTS which were addressed in the Consultation:

– Mock-up 1: pre-contractual disclosure for a product promoting E/S characteristics (with icons);

– Mock-up 2: pre-contractual disclosure for a product promoting E/S characteristics (without icons); and

– Mock-up 3: periodic disclosure for a product promoting E/S characteristics (with icons).

For further information, the Survey is available here.

What's next?

Comments to the Survey shall be submitted to the ESAs by 16 October 2020.

The ESAs highlight the following points:

– The templates for the disclosure of products with a sustainable investment objective (Article 9 of the SFDR) are very similar to those for the products promoting E/S characteristics and have not been included in the Survey;

– The Mock-Ups are purely illustrative for the purposes of gathering feedback on the presentation of information;

– The colour of the font and of the template's background, as well as type of font to be used are not prescribed in the templates. These should be adapted by the FMPs to fit the formatting of the underlying document into which the templates are incorporated (prospectus, annual report, pre-enrolment disclosure for prospective pension scheme members, etc.); and

– The final content of the templates is subject to the outcome of concurrent consumer testing exercises and the final report of the ESAs on the draft RTS under the SFDR.

What is the impact for you?

For your information only.

25 September 2020

Financial Stability/COVID-19 – Level 3 – ESAs report on risks and vulnerabilities in the investment fund sector

Background

On 12 September 2019, the Joint Committee of the European Supervisory Authorities (the "ESAs") released the report entitled "Risks and Vulnerabilities in the EU Financial System" and dated 26 August 2019 (JC 2019 54 – the "2019 Report", available here).

What's new?

On 22 September 2020, the ESAs issued their first joint report on risks and vulnerabilities in the EU financial system (dated 4 September 2020) since the outbreak of the COVID-19 pandemic (JC 2020 67 – the "2020 Report").

With regard to the investment fund sector, the ESAs highlight the following risks and developments:

– Significant deterioration in asset liquidity in some segments combined with substantial outflows from investors in selected asset classes (e.g. bond fund outflows reached record highs in Q1 2020 representing 4% of the sector's Net Asset Value («NAV");

– Heightened liquidity challenges in some segments (e.g. the EU short-term Money Market Funds ("MMF") industry faced liquidity challenges during the period of acute stress); and

– The ESAs refer to (i) ESMA's recommendations to financial market participants on business continuity planning, market disclosure, financial reporting and fund risk management, and (ii) ESMA's initiatives to address the effects of the COVID-19 pandemic in areas including the benchmarks regulation, corporate disclosure issues, credit rating agencies supervision, bilateral margining requirements, fund management periodic reporting, MiFID II/MiFIR, as well as short selling (available here).

For further information, the 2020 Report is available here.

What's next?

In the 2020 Report, the ESAs underline the following policy actions concerning the investment fund sector:

– Preparation for possible further market corrections and deterioration in financial market liquidity. In this context, financial institutions and supervisors should consider various scenarios and, for example, perform stress testing or sensitivity analyses in order to map the impact of potential shocks. For the investment fund sector, this should be complemented by continued monitoring of liquidity management tool adequacy and usage. Furthermore, financial institutions cannot fully rely on their existing risk management frameworks, as they may not sufficiently consider the unique characteristics of the COVID-19 crisis for managing their risks;

– Supervision of digital transformation by managing ICT and security risks, including when outsourcing ICT activities; and

– The ESAs are monitoring financial institutions' preparedness for the end of the transitional period, when UK institutions will lose their passporting rights into the EU as of 1 January 2021.

What is the impact for you?

For your information only.

25 September 2020

Financial Stability/COVID-19 – Level 3 – ESAs report on risks and vulnerabilities in the banking sector

Background

On 12 September 2019, the Joint Committee of the European Supervisory Authorities (the "ESAs") released the report entitled "Risks and Vulnerabilities in the EU Financial System" and dated 26 August 2019 (JC 2019 54 – the "2019 Report", available here).

What's new?

On 22 September 2020, the ESAs issued their first joint report on risks and vulnerabilities in the EU financial system (dated 4 September 2020) since the outbreak of the COVID-19 pandemic (JC 2020 67 – the "2020 Report").

With regard to the banking sector, the ESAs highlight the following risks and developments:

– Strong capital levels helped banks to increase their lending to the economy in the short term, particularly to those sectors most in need of liquidity, and should help banks to withstand the impact of forthcoming expected credit risk losses stemming from the COVID-19 crisis. However, the dispersion of capital levels among EU banks remains high, and some banks having entered the COVID-19 crisis with relatively lower capital levels and riskier exposures may face challenges;

– Bank funding conditions materially deteriorated with the outbreak of the COVID-19 crisis in late February 2020. However, funding conditions have steadily improved since April 2020 and spreads have contracted, not least driven by the wide range of fiscal and policy support measures;

– The ESAs refer to several EBA support measures addressed to supervisors and banks in order to respond to the COVID-19 crisis (available here), including using capital and liquidity buffers to absorb losses, and thus to ensure continued lending to the economy; and

– Significant challenges to bank sector profitability present already before the COVID-19 pandemic (e.g. low margins, intense competition, including from the FinTech sector, or high operating costs) have exacerbated. The COVID-19 pandemic is expected to have a further significantly adverse impact on profitability.

For further information, the 2020 Report is available here.

What's next?

In the 2020 Report, the ESAs underline the following policy actions concerning the banking sector:

– Bank asset quality is expected to be a key challenge going forward. Banks and supervisors should properly assess the quality of loan portfolios and also consider in their preparations that widely introduced legislative and non-legislative loan moratoria, as well as further policy measures such as loan guarantee schemes, are of a temporary nature;

– The financial sector shall remain well-capitalised, considering the overall uncertainty of the scale and duration of the COVID-19 crisis. Financial institutions should ensure that the assessment of their capital positions is "forward-looking" and that it considers current uncertainties, following prudent dividend and other distribution policies, including variable remuneration. At the same time, supervisors and banks should make use of the flexibility embedded in the existing regulatory framework;

– Preparation for possible further market corrections and deterioration in financial market liquidity. In this context, financial institutions and supervisors should consider various scenarios and, for example, perform stress testing or sensitivity analyses in order to map the impact of potential shocks. Furthermore, financial institutions cannot fully rely on their existing risk management frameworks, as they may not sufficiently consider the unique characteristics of the COVID-19 crisis for managing their risks;

– Supervision of digital transformation by managing ICT and security risks, including when outsourcing ICT activities; and

– The ESAs are monitoring financial institutions' preparedness for the end of the transitional period, when UK institutions will lose their passporting rights into the EU as of 1 January 2021.

What is the impact for you?

For your information only.

Luxembourg

1 July 2020

UCITS – CSSF issues Guidelines on URR (June 2020)

Background

Pursuant to Article 147 of the Luxembourg law of 17 December 2010 relating to undertakings for collective investment (the "2010 Law", as amended, available here), the Luxembourg Commission de Surveillance du Secteur Financier (the "CSSF") requires financial information from undertakings for collective investment in transferable securities ("UCITS") on a half-yearly basis, including their exposures to financial derivative instruments and liquidity and credit risks.

UCITS are informed by a CSSF circular letter if, based on the value of total net assets ("TNAs") and use of leverage parameters, they are subject to the light or full version of the UCITS risk reporting ("URR").

What's new?

On 26 June 2020, the CSSF issued its guidelines on URR – June 2020 (the "Guidelines").

The reporting scope of the Guidelines encompasses all Luxembourg-domiciled UCITS authorised by the CSSF as at 30 June 2020, given that UCITS liquidated during the reference period are out of scope. The current URR exercise covers the half-year starting 1 January 2020 and ending 30 June 2020.

The Guidelines state that the URR file consists of the following sheets:

- Sheet 1 entitled "DataURR" that mainly refers to risk information at UCITS level. The CSSF understands that some data items might be available at share class level (e.g. value-at-risk ("VaR"), leverage, volatility). As the current reporting applies at sub-fund level, the CSSF expects that the data provided meet the principles of "representativeness and consistency"; and
- Sheet 2 entitled "Contact details" that aims at collecting contact details at the level of the management company or self-managed investment company in order to enable the CSSF, amongst others, to send the circular letter for URR by e-mail (in addition to the posted letter) to all addressees.

All the aforesaid UCITS, without exception, shall provide Sheet 2 and the data items referred to in Section I ("Functional Data") of the DataURR. In addition, all UCITS meeting one or both of the following criteria shall fill in Sections II ("Key investment strategy"), III ("Global exposure and leverage"), IV ("Stress testing and other risk indicators"), V ("Efficient portfolio management ("EPM") techniques"), VI ("Counterparty risk and collateral in relation to EPM techniques / OTC financial derivative instruments and traded derivatives"), VII ("Liquidity risk") and VIII ("Credit risk information") of the DataURR:

- UCITS with TNAs at the reporting reference date (at 30 June 2020) equal to or greater than 500 million euros;
- UCITS using the VaR method for calculating the global exposure as laid down in Article 42(3) of the 2010 Law, over the reference semester (starting 1 January 2020 and ending 30 June 2020) equal to or greater than 250% of the UCITS' TNA.

For further information, the Guidelines are available here.

The template of the URR file is available here.

An example of a completed URR reporting file is available here.

The "URR ManCo Identifiers" are available here.

Further URR documents listed in the Guidelines are available here.

What's next?

UCITS shall submit the URR Excel file as at 30 June 2020 to the CSSF by email at "URR_reporting@cssf.lu" by 14 August 2020.

Prior to the submission of such reporting file, the CSSF asks management companies or self-managed investment companies to "critically verify", that they cover all UCITS authorised as at 30 June 2020 by consulting the "UCITS Identifiers List" (only available here as from 15 July 2020).

For any further questions on the Guidelines, the CSSF can be contacted at: "mireille.reisen@cssf.lu" or "pierre.trovato@cssf.lu".

Each subsequent URR will give rise to a new circular letter addressed by the CSSF to the industry. The next report is scheduled for the reference date of 31 December 2020 covering the semester from 1 July 2020 to 31 December 2020.

What is the impact for you?

For your information only.

6 July 2020

CSSF Regulation No. 20-02 as of 29 June 2020 and CSSF circular 20/743 as of 1st July 2020 Third-country firms providing investment services or performing investment activities

Background

CSSF Regulation No. 20-02 provides further clarifications on:

- the equivalence of certain third countries with respect to supervision and authorisation rules for the purpose of providing investment services or performing investment activities and ancillary services by third-country firms.

CSSF Circular 20/743 provides further clarifications on:

- third-country firms providing investment services or performing investment activities and ancillary services in accordance with article 32-1 of the Law of 5 April 1993 on the financial sector ("LFS").

What's new?

CSSF Regulation No. 20-02:

For the purposes of the second subparagraph of Article 32-1(1) of the Law of 5 April 1993 on the financial sector, the following countries – Canada, the Swiss Confederation, the United States of America, Japan, Hong Kong Special Administrative Region of the People's Republic of China and the Republic of Singapore – shall be deemed to apply LFS-equivalent supervision and authorisation rules to firms having their central administration or registered office in these third countries.

CSSF Circular 20/743:

Amendment to CSSF circular 19/716 regarding the provision in Luxembourg of investment services or performance of investment activities and ancillary services in accordance with Article 32-1 of the LFS.

Where an investment service is provided on a reverse solicitation basis, third-country firms are exempt from requesting authorisation in Luxembourg or from establishing a branch here.

Article 32-1 of the LFS is applicable to investment services provided in Luxembourg. The CSSF considers that the investment service is presumed to be provided in Luxembourg when one of the following conditions is met:

- the third-country firm has an institution (for example, a branch) in Luxembourg;
- the third-country firm provides an investment service to a retail client established or located in Luxembourg; or;
- the Grand Duchy is the principal location where the firm's principal business activities related to Luxembourg clients is taking place.

There are therefore special situations where, although the third-country firm provides investment services to a client, other than a retail client, established or located in Luxembourg, the service can be considered to not be supplied "in Luxembourg".

Where an investment service is provided on a reverse solicitation basis, article 32-1, subsections (1) and (2) of the LSF does not apply. The third-country firm can then provide the investment service without having to establish a branch or without having to obtain a decision from the CSSF, whatever the client classification (retail client, 'per se' professional client, 'on request' professional client or eligible counterparty).

The customer's initiative does not give the third-country firm the right to market new categories of investment products or services to this client.

For further clarifications, please refer to the following links:

- CSSF Regulation N0. 20-02:

https://www.cssf.lu/wp-content/uploads/RCSSF-20_02-equivalence-third-country-firms.pdf

- CSSF Circular 20/743 (only in French):

https://www.cssf.lu/wp-content/uploads/cssf20_743.pdf

What is the impact for you?

For your information only.

9 July 2020

AML/CFT – CSSF issues Circular 20/744 complementing Circular 17/650 on predicate tax offences with an additional list of indicators specific to collective investment activities

Background

On 17 February 2017, the Luxembourg Commission de Surveillance du Secteur Financier (the «CSSF") issued

its circular 17/650 on the application of the law of 12 November 2004 on the fight against money laundering and terrorist financing (the "AML/CFT Law", as amended, available here) and Grand-ducal regulation of 1 February 2010 providing details on certain provisions of the AML/CFT Law (the "AML/CFT GDR", as amended, available here) to predicate tax offences ("Circular 17/650", available here).

Against this background, Circular 17/650 provides guidance on the extension of the offence of money laundering to aggravated tax fraud ("fraude fiscale aggravée") and tax evasion ("escroquerie fiscale") and on applicable AML/CFT professional obligations. In particular, Annex 1 to Circular 17/650 contains a list of common indicators applicable to all professionals under the AML/CFT supervision of the CSSF.

What's new?

On 3 July 2020, the CSSF issued AML/CFT circular 20/744, which complements Circular 17/650 and which is addressed to all the persons and entities under the supervision of the CSSF ("Circular 20/744").

It should be noted that the amendments introduced by Circular 20/744 only concern Annex 1 to Circular 17/650. Annex 1 to Circular 20/744 ("List of indicators concerning the professional obligation to report suspicions regarding the predicate offence of laundering of an aggravated tax fraud or tax evasion") shall replace (current) Annex 1 to Circular 17/650, as it details 7 new indicators to be taken into account in the context of collective investment activities (under a newly added title II "Specific indicators concerning collective investment activities ("List II")"). In other words, the new Annex 1 to Circular 17/650 is completed with the 7 below indicators specific to the collective investment activities and to professionals providing services in that particular sector:

- Complex investment structuring;
- Tax-base erosion;
- Investment transactions;
- Efficient portfolio management techniques;
- Investment companies in risk capital ("SICAR");
- Subscription tax; and
- Investor tax reporting.

For further information, Circular 20/744 is available here.

What's next?

Circular 20/744 shall apply from 3 July 2020. The CSSF expects professionals under its AML/CFT supervision to take the 7 above-mentioned new indicators, where relevant, into account in their risk assessment and when designing risk mitigation measures proportionate to their risk exposure within the specific context of collective investment activities.

The consolidated version of Circular 17/650, including its new Annex 1, should be published on the CSSF's website shortly.

What is the impact for you?

For your information only.

10 July 2020

UCI Investment Rules – CSSF issues FAQ (Version 0.1) on Circular 02/77

Background

On 27 November 2002, the Luxembourg Commission de Surveillance du Secteur Financier (the "CSSF") issued circular 02/77 concerning the protection of investors in the event of Net Asset Value ("NAV") calculation error and on the correction of the consequences resulting from non-compliance with the investment rules applicable to undertakings for collective investment ("Circular 02/77", available here).

The CSSF notification form in relation to Circular 02/77 was last updated on 15 May 2020 (the "Notification Form", available here).

For ease of reading, reference is made to the following Luxembourg laws:

- Law of 17 December 2010 relating to undertakings for collective investment (the "2010 Law", available here);
- Law of 13 February 2007 relating to specialised investment funds (the "2007 Law", available here); and
- Law of 12 July 2013 on alternative investment fund managers (the "2013 Law", available here).

What's new?

On 7 July 2020, the CSSF issued a list of frequently asked questions and answers ("Q&As") on certain provisions of Circular 02/77 (the "FAQ", Version 0.1).

In this context, the CSSF highlights that the FAQ applies to Undertakings for Collective Investment in Transferable Securities ("UCITS") and undertakings for collective investment subject to Part II of the 2020 Law and outlines the principles to be applied by specialised investment funds ("SIFs") (hereafter "UCI"). For SIFs, specific guidance is given in Q&As 9 (NAV calculation errors and active investment breaches) and 12 (organisational requirements) of the FAQ.

In particular, the FAQ comprises 3 chapters and 21 Q&As on the following areas:

- Chapter I – General application of Circular 02/77 (Q&As 1-11);

- “5/40%” investment restriction for UCITS pursuant to Article 43(2) of the 2010 Law;
- Active investment breaches corrected by market developments or by new subscriptions and calculation of the financial impact;
- Reporting and compensation of active “intraday” investment breaches;
- Situations that should be treated as active investment breaches by UCITS of the 20% deposit limit of Article 43(1) of the 2010 Law;
- In the event of an active investment breach by a UCITS of the 20% deposit limit of article 43(1) of the 2010 Law where the deposit returns a negative interest to the UCITS, the application of a method that consists in comparing the interest rates between different bank accounts to determine the financial impact is not allowed by the CSSF;
- Preparation and communication of a “remedial action plan” or a “notification” to the CSSF;
- Use of the “de minimis” amount for compensating investors;
- Active non-compliance with the diversification rules set out in Point 43(e) of the ESMA Guidelines concerning the diversification of collateral received by UCITS to reduce the counterparty risk exposure arising from OTC financial derivative transactions and efficient portfolio management techniques (“ESMA/2014/937”, available here);
- SIFs may either opt for the application of Circular 02/77 or set other specific internal rules applicable in the context of NAV calculation errors and active investment breaches;
- The CSSF will not confirm in writing that the notification (of a material NAV calculation error or an active investment breach) has been processed but it may take action on an ex-post basis; and
- Monitoring and correction of leverage limit breaches defined in “CESR Guidelines 10/788” for UCITS (available here) or in Article 3 of “Commission Delegated Regulation (EU) No 231/2013” for AIFs (available here).

– Chapter II – Selection of the (“economic” or “accounting”) correction method (Q&As 12-18); and

- Organisational requirements that apply in the context of NAV calculation errors and active investment breaches falling under Circular 02/77. More specifically, investment fund managers (“IFMs”) shall establish and implement a “detailed policy” approved by the IFM’s Board of Directors and, if applicable, by the UCI’s Board of Directors;
- Principles that must be observed when using the economic method (which must be laid down in the IFM’s internal policy; otherwise, the CSSF expects the accounting method to be used);
- In applying the economic method, the performance of the “selected reference” shall be compared to the performance of the non-eligible asset for calculating the compensation amount;
- The method that only compares the performance of a non-eligible asset with a corresponding eligible asset is not accepted by the CSSF;
- The IFM’s Board of Directors, and, if applicable, the UCI’s Board of Directors, are ultimately responsible for the method used to determine the compensation amount. For an umbrella fund, the methodology can be chosen for the entity as a whole or at the level of each sub-fund individually;
- It is possible, within the same UCI, to use the accounting method to calculate the compensation amount for certain active investment breaches and to use an economic method to calculate the compensation amount for other types of active investment breaches, if this is formally laid down in the IFM’s internal policy and applied on a consistent basis; and
- It is only possible to change the correction method (e.g. from the accounting to the economic method), if there is an adequate justification for such a change, which must be approved by the IFM’s Board of Directors and, if applicable, by the UCI’s Board of Directors. The CSSF considers that consistency must exist in the application of the chosen method.

– Chapter III – Tolerance threshold of Circular 02/77 (Q&As 19-21).

- The tolerance thresholds provided for by Circular 02/77 cannot be used to refuse reimbursement of overcharged fees/costs. However, the recalculation of the NAV is only necessary in situations where the reimbursed fees/costs exceed the materiality threshold applicable in accordance with Circular 02/77;
- Notification to the CSSF of NAV calculation errors based on the lower thresholds as determined for the UCI; and
- The applicable materiality threshold for NAV calculation errors for a fund of fund, an index tracker and a feeder fund should be defined by reference to the investment policy laid down in the prospectus.

For further information, the FAQ is available here.

What's next?

The FAQ is applicable from 7 July 2020.

It should be noted that the CSSF details in Q&A 12 of the FAQ a non-exhaustive list of elements that the (robust) policy and related operational procedures governing the treatment of NAV calculation errors and investment breaches under Circular 02/77 should cover. SIFs, which are not referred to in the specific provisions of Part II of the 2007 Law and which are subject to "CSSF Regulation No. 15-07" (available here), should also establish and implement such a policy. The CSSF also recommends that "UCIs" subject to Part II of the 2010 Law, which are not managed by an authorised alternative investment fund manager ("AIFM") as defined in the 2013 Law, establish and implement such a policy.

Besides, the Appendix to the FAQ (Cf. pages 17-19) presents (i) a decision tree for NAV calculation errors, (ii) a decision tree for investment breaches, and (iii) a decision tree for the use of the economic/accounting method.

What is the impact for you?

For your information only.

22 July 2020

Financial Supervision/COVID-19 – CSSF reiterates precautionary instructions amid a resurgence of COVID-19 cases

Background

On 17 April 2020, the Luxembourg Commission de Surveillance du Secteur Financier (the "CSSF") urged all financial institutions under its prudential supervision (the "Supervised Entities") to continue to work from home in a COVID-19 communiqué ("Communiqué 1", available here). In Communiqué 1, the CSSF reminded the Supervised Entities that satisfactory IT security conditions should be guaranteed and that no prior authorisation was needed for such work arrangements.

On 12 May 2020, the Luxembourg Government released a revised version of the COVID-19 precautionary measures (the "Measures as of 12 May 2020", available here).

On 14 May 2020, the CSSF released its COVID-19 communiqué entitled "Recommendations to supervised entities on telework and a possible return to the office" ("Communiqué 2", available here).

On 19 June 2020, the CSSF released a communiqué entitled "Measures requested by the CSSF in the light of the return to working on-site" ("Communiqué 3", available here in English and here in French). Taking into account that COVID-19 is still present in Luxembourg and in order to avoid a second wave of infections and ensure operational continuity of the Supervised Entities, the CSSF requested, in Communiqué 3, that the Supervised Entities apply the following measures (in particular hand hygiene, coughing and sneezing etiquette and social distancing) when employees and external providers return to work on-site:

- Identification of vulnerable staff, or staff members who are part of a household with vulnerable people, and definition of protection measures for these employees;
- Definition of organisational rules with respect to internal and external meetings and regarding the reception of visitors;
- Implementation of procedures regarding restaurant, coffee and meeting areas;
- Implementation of rules to keep people infected by or suspected of being infected by COVID-19 from returning to the office;
- Specific cleaning or disinfection of office areas and equipment; and
- Displaying the hygiene and safety measures, as published by the Luxembourg Government (see the Measures as of 12 May 2020).

What's new?

On 17 July 2020, the CSSF released a communiqué reiterating precautionary instructions amid a resurgence of COVID-19 cases ("Communiqué 4").

In Communiqué 4, the CSSF states that it remains essential to limit the spread of the virus whilst ensuring the operational continuity of the Supervised Entities. Consequently, the CSSF asks the Supervised Entities to urgently take the following actions:

- To review their plans to lift lockdown to ensure that they are in line with the current situation, especially with regard to persons with vulnerabilities; and
- To ensure that the health measures mentioned in its Communiqué 3 are strictly observed.

For further information, Communiqué 4 is available here in English and here in French.

What's next?

The CSSF will revise the recommendations of Communiqué 4 depending on how the COVID-19 pandemic evolves and on future recommendations issued by the Luxembourg Government.

What is the impact for you?

For your information only.

23 July 2020

CSSF Circular 20/744 complementing Circular CSSF 17/650: New specific indicators on tax fraud for the Asset Management industry

Background

On 3 July 2020, the CSSF issued a circular which complements Circular CSSF 17/650 related to the extension of laundering offence to aggravated tax fraud and tax swindle.

What's new?

With this new Circular, the CSSF expands Annex 1 of the 2017 Circular with an additional list of indicators specific to collective investment activities and to professionals providing services in the Asset Management sector.

The circular is available here.

What's next?

PwC will keep you updated on further developments.

What is the impact for you?

For your information only.

27 July 2020

CRR/Financial Reporting – CSSF issues Circular 20/745 updating Circular 14/593 on supervisory reporting requirements applicable to credit institutions

Background

On 21 August 2019, the Luxembourg Commission de Surveillance du Secteur Financier (the "CSSF") released its "Circular 19/729" (available here only in French) updating "Circular 14/593" (available here only in French) on supervisory reporting requirements applicable to credit institutions.

On 31 March 2020, Commission implementing regulation (EU) 2020/429 amending "Implementing Regulation 680/2014" (available here) laying down implementing technical standards ("ITS") with regard to supervisory reporting of institutions according to "CRR" (available here) entered into force ("Implementing Regulation 2020/429", available here).

In order to align "Regulation 2015/534" (ECB/2015/13, available here) with Implementing Regulation 680/2014, as amended, «Regulation 2020/605» of the European Central Bank on the reporting of supervisory financial information shall apply from 1 June 2020 (ECB/2020/22, available here).

What's new?

On 6 July 2020, the CSSF issued circular 20/745, which updates Circular 14/593 and which is addressed to all credit institutions («Circular 20/745»).

In this context, the CSSF highlights that the main amendment consists in updating the Annex to Circular 14/593 (FINREP tables to be submitted from June 2020), following the publication of Regulation 2020/605.

The Annex to Circular 20/745 includes the changes brought about by this circular to Circular 14/593 in "tracked changes" mode in order to make it easier to read and understand.

For further information, Circular 20/745 is available here (only in French).

What's next?

For any queries regarding Circular 14/593, as last amended by Circular 20/745, stakeholders may contact the CSSF at the following email address: ReportingBanques@cssf.lu.

What is the impact for you?

For your information only.

28 July 2020

CRR/COVID-19 – CSSF issues Circular 20/748 adopting EBA Guidelines 2020/07 on reporting and disclosure of exposures subject to measures applied in response to the COVID-19 pandemic

Background

Regulation (EU) 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms has applied since 1 January 2014 (the «CRR», available here). For ease of reading, the current consolidated version of the CRR as of 27 June 2020 is available here. Article 47b (1) of the CRR defines «forbearance measures» as a concession by an institution towards an obligor that is experiencing or is likely to experience difficulties in meeting its financial commitments.

On 2 April 2020, the European Banking Authority (the «EBA») published its guidelines on treatment of public and private moratoria in light of COVID-19 measures (EBA/GL/2020/02 — the «May 2020 Guidelines», available here), which aim at clarifying the conditions under which payment moratoria will not trigger classification as forbearance or distressed restructuring.

On 2 June 2020, the EBA released its guidelines on

reporting and disclosure of exposures subject to measures applied in response to the COVID-19 crisis (EBA/GL/2020/07 — the «June 2020 Guidelines», available here). In particular, the June 2020 Guidelines cover the following areas:

- Reporting requirements to monitor the use of payment moratoria and changes to the credit quality of the exposures subject to such moratoria in accordance with the May 2020 Guidelines;
- Disclosure requirements for the exposures subject to the payment moratoria pursuant to the May 2020 Guidelines;
- Reporting requirements for the new loans subject to specific public guarantees set up to mitigate the effects of the COVID-19 crisis;
- Disclosure requirements for the new loans subject to the specific public guarantees set up to mitigate the effects of the COVID-19 crisis; and
- Reporting requirements on other forbearance measures applied in response to the COVID-19 crisis.
- The June 2020 Guidelines are complemented with the following annexes:
- Annex 1 – COVID-19 reporting templates (the «Reporting Templates», available here);
- Annex 2 – COVID-19 reporting instructions (the «Reporting Instructions», available here); and
- Annex 3 – COVID-19 disclosure template (the «Disclosure Template», available here).

What's new?

On 23 July 2020, the Luxembourg Commission de Surveillance du Secteur Financier (the «CSSF») issued circular 20/748 adopting the June 2020 Guidelines («Circular 20/748»).

In this context, the CSSF intends to incorporate the June 2020 Guidelines into its regulatory approach and administrative practice with a view to promoting supervisory convergence at EU level. Circular 20/748 is addressed to all credit institutions designated as Less Significant Institutions («LSIs») under the «Single Supervisory Mechanism» [Framework Regulation, available here] and to all branches of non-EU credit institutions (referred to as «In-Scope Entities»).

With regard to reporting requirements, In-Scope Entities shall submit the following tables on a quarterly basis:

- Tables 90.01 and 91.01 if they apply the industry-wide moratorium in Luxembourg as coordinated by the ABBL for related exposures; and
- Tables 90.03 and 91.05 if they have signed the Convention with the Luxembourg State Treasury to originate loans covered by the Luxembourg State Guarantee in the context of the COVID-19 pandemic pursuant to «the Law of 18 April 2020 for related exposures» (available here only in French).

Furthermore, the CSSF may request In-Scope Entities to submit additional reporting, in particular:

- Tables 90.01, 91.01, 90.03 and 91.05 if they make use of legislative and non-legislative general moratoria compliant with the May 2020 Guidelines in other EU jurisdictions or of public guasrantee schemes in other jurisdictions; and
- Additional templates using the relevant tables in Annex 1 of the June 2020 Guidelines in consideration of the changes to the credit quality of the exposures. The reporting templates shall be submitted on a quarterly basis, unless a higher reporting frequency is deemed appropriate in consideration of developments in the COVID-19 crisis.

In accordance with Paragraph 19 of the June 2020 Guidelines, the disclosure requirements apply to In-Scope Entities required to comply with some or all of the disclosure requirements in Part Eight of the CRR, as specified in Articles 6, 10 and 13 thereof. These In-Scope Entities shall disclose templates 1 to 3 of Annex 3 of the June 2020 Guidelines on a semi-annual basis.

For further information, Circular 20/748 is available here.

What's next?

Circular 20/748 shall apply from 23 July 2020. For any further queries regarding the Circular 20/748, stakeholders can contact the CSSF at covid-moratorium@cssf.lu.

For the purpose of assessing the need for additional reporting, In-Scope Entities shall notify the CSSF by 3 August 2020, or on a timely basis at any subsequent dates, where they apply or intend to make use of the measures covered in the June 2020 Guidelines in other (EU) jurisdictions at covid-moratorium@cssf.lu.

In-Scope Entities are required to comply with the reporting provisions on the reference dates, remittance dates, data exchange formats and representations, as well as associated information as detailed in Paragraphs 16 to 18 and in the Annexes of the June 2020 Guidelines. The first reporting reference date is 30 June 2020 with the first remittance date set for 11 August 2020. In-Scope Entities are required to submit their reporting templates as at the 30 June 2020 reference date using the Excel format and to complete the COVID-19 reporting templates in accordance with the reporting instructions published on the EBA's website (available here). From the end-of-September 2020 reference date onwards, only XBRL reporting tables will be accepted.

In-Scope Entities subject to Part Eight of the CRR are required to publish the disclosure templates as of the 30 June 2020 reference date onwards.

What is the impact for you?

For your information only.

---

29 July 2020

AML/CFT – CSSF publishes first ML/FT sub-sector risk assessment report on specialised professionals of the financial sector providing corporate services (TCSP activities)

Background

Directive (EU) 2015/849 of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing has applied since 26 June 2017 («4AMLD», latest consolidated version available here). Pursuant to Article 7(1) of 4AMLD, Luxembourg shall take appropriate steps to identify, assess, understand and mitigate the risks of money laundering and terrorist financing («ML/FT») affecting it and keep that risk assessment up-to-date.

In preparation of the Financial Action Task Force («FATF») peer review process, which will assess technical compliance with the updated 40 «FATF Recommendations» (available here), Luxembourg's competent authorities (the «Authorities») carried out their first National Risk Assessment (the «NRA») on ML/FT risks from mid-2016 to 2018. On 20 December 2018, a summary report of the NRA was published by the Luxembourg Ministry of Finance (the «Summary NRA Report», available here in English and here in French). On 9 October 2019, the Luxembourg Commission de Surveillance du Secteur Financier (the «CSSF») issued a communiqué informing that the full report of Luxembourg's NRA on ML/FT risks (the «Full NRA Report») was available to professionals under its supervision (the «October 2019 Communiqué», available here only in French). In the October 2019 Communiqué, the CSSF stated that it would publish several ML/FT risk assessment reports for sub-sectors with high inherent risk, including Specialised Professionals of the Financial Sector («Specialised PFS»).

What's new?

On 20 July 2020, the CSSF issued a communiqué (the «Communiqué»), which includes Luxembourg's first ML/FT sub-sector risk assessment report on Specialised PFS providing corporate services (Trust and Company Service Provider [«TCSP»] activities) (the «Report»).

For the purposes of the Report, the CSSF has grouped the licensed TCSP activities performed by Specialised PFS as follows: (i) incorporation of companies, (ii) provision of directorship and corporate secretarial services, (iii) domiciliation of companies, and (iv) nominee shareholder services.

The areas covered in the Report include:

- Inherent risk – threat assessment (Chapter 4), which highlights various threats (e.g. fraud and forgery, tax crimes, corruption and bribery) and global risks for Specialised PFS, and which focuses on specific ML/TF risks for the Luxembourg industry;
- Inherent risk – vulnerability assessment (Chapter 5), which considers 5 main risk factors, i.e. (i) market structure, (ii) clients, (iii) products and services, (iv) channels of distribution, and (v) geography; and
- Mitigating factors (Chapter 6), both at supervisory and control levels, to reduce inherent ML/FT risk. The assessment is based on the following 4 mitigating factors: ML/FT assessment, AML/CFT supervision, ongoing monitoring, and procedures and training courses.

The Report includes a list of the most frequent off- and on-site findings for Specialised PFS (Chapter 6.3) divided into best practices and most common shortcomings.

The Report also outlines 15 high-level recommendations and examples on how Specialised PFS may demonstrate compliance (Chapter 7.1) to enhance the regulatory and supervisory framework which are intended to be integrated as part of the CSSF's current AML/CFT strategy and action plan.

For further information, the Communiqué and the Report are available here and here, respectively.

What's next?

The CSSF expects Specialised PFS to reflect the findings and conclusions from the Report into their AML/CFT framework to ensure they remain appropriate to effectively mitigate ML/FT risks.

The CSSF has highlighted that TCSP activities are also performed by other professionals (falling outside the scope of the Report) that may find the information helpful to reflect upon and strengthen their AML/CFT framework.

What is the impact for you?

For your information only.

30 July 2020

UCI Investment Rules – CSSF updates FAQ (Version diffusée) on Circular 02/77

Background

On 27 November 2002, the Luxembourg Commission de Surveillance du Secteur Financier (the «CSSF») issued circular 02/77 concerning the protection of investors in the event of Net Asset Value («NAV») calculation error and on the correction of the consequences resulting from non-compliance with the investment rules applicable to undertakings for collective investment («Circular 02/77», available here). The CSSF notification form in relation to Circular 02/77 was last updated on 15 May 2020 (the «Notification Form», available here).

On 7 July 2020, the CSSF issued a list of frequently asked questions and answers («Q&As») on certain provisions of Circular 02/77 (the «FAQ», Version 0.1). In this context, the CSSF highlights that the FAQ applies to Undertakings for Collective Investment in Transferable Securities («UCITS») and undertakings for collective investment subject to Part II of the «2010 Law» (available here) and outlines the principles to be applied by specialised investment funds («SIFs») (hereafter «UCIs»). For SIFs, specific guidance is given in Q&As 9 (NAV calculation errors and active investment breaches) and 12 (organisational requirements) of the FAQ.

What's new?

On 28 July 2020, the CSSF updated its FAQ (the «FAQ», Version diffusée).

In the FAQ, the CSSF corrected the following points:

- Text of the question 11 (the answer 11 remains the same) should now be read as «Should a UCITS that exceeds the level of leverage as disclosed to investors in the fund prospectus in accordance with box 24 of the CESR guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS (CESR-10/788 dated 28/07/2010 [available here]) for UCITS, respectively should a regulated AIF that exceeds the leverage limits as disclosed to investors in accordance with Article 21 (1) (a) of the Law of 12 July 2013 [available here] , notify such situation to the CSSF in the context of the provisions of Circular CSSF 02/77?»
- One textbox in decision tree 1 for NAV calculation errors (on «Specific auditor reports»); and
- One textbox in decision tree 2 for investment breaches (on «Specific auditor reports»).

For further information, the FAQ is available here.

What's next?

The CSSF may further amend/update the FAQ as and where appropriate.

What is the impact for you?

For your information only.

30 July 2020

DAC 6, CRS and FATCA: Luxembourg law transferring deadline extension for Automatic Exchanges of Information regimes into Luxembourg legislation has been voted

Background

On 22 July 2020, the Luxembourg Parliament voted to approve the bill, which was published in the Memorial on 24 July 2020 (the "Law of 24 July 2020").

What's new?

The Law of 24 July 2020 amends the law of 24 July 2015 implementing FATCA, and the law of 18 December 2015 regarding the CRS, to specify that the exchange of information relating to the calendar year 2019, between Member States under DAC 2 (i.e. the Directive implementing the CRS within the EU), would occur by 31 December 2020 (instead of 30 September 2020).

Luxembourg financial institutions would also be authorised to provide the Luxembourg tax authorities with the information required by 30 September 2020, rather than by the initial 30 June 2020 deadline, thus also benefiting from this three-month extension period.

The link to the consultation is available here.

What's next?

PwC will keep you updated on further developments.

What is the impact for you?

For your information only.

20 August 2020

UCITS – CSSF issues Version 9 of FAQs concerning the 2010 Law on undertakings for collective investment

Background

The Luxembourg Commission de Surveillance du Secteur Financier (the «CSSF») publishes answers to frequently asked questions concerning certain key aspects of the

laws and regulations governing undertakings for collective investment in transferable securities («UCITS») from a Luxembourg perspective (the «CSSF FAQs»). The CSSF FAQs are therefore primarily addressed to management companies that are established in Luxembourg. Version 8 of the CSSF FAQs («CSSF FAQs V8», available here) was issued on 10 March 2020.

The CSSF FAQs should be read in conjunction with the questions and answers, issued by the European Securities and Markets Authority («ESMA»), concerning the application of the laws and regulations governing UCITS (ESMA-34-43-392 — the «ESMA Q&As», the latest version of which was issued on 4 June 2019 is available here).

The section below refers to the following sources:

- The Committee of European Securities Regulators' guidelines, last updated in September 2008, concerning eligible assets for investments by UCITS (the «CESR Guidelines», available here);
- The Grand-Ducal Regulation of 8 February 2008 relating to certain definitions of the amended law of 20 December 2002 on undertakings for collective investment and implementing Commission Directive 2007/16/EC of 19 March 2007 (the «2008 Regulation», available here);
- Directive 2009/65/EC of the European Parliament and of the Council of the EU on the coordination of laws, regulations and administrative provisions relating to UCITS (the «UCITS Directive», latest consolidated version, available here); and
- The Law of 17 December 2010 transferring the UCITS Directive into Luxembourg legislation (the «UCI Law», as amended, available here).

What's new?

On 7 August 2020, the CSSF issued version 9 of its FAQs (the «CSSF FAQs V9»), adding Question 1.13 (on page 11) on whether or not loans constitute eligible investments for UCITS. In response thereto, the CSSF provides that:

- Loans are not eligible investments for UCITS as they do not qualify as:
- • Money market instruments within the meaning of article 1 (23) of the UCI Law and Articles 3 and 4 of the 2008 Regulation, further clarified by the CESR Guidelines; or
- • Transferable securities within the meaning of Article 1 (34) of the UCI Law and Article 2 of the 2008 Regulation, further clarified by the CESR Guidelines.

For further information, the CSSF FAQs V9 is available here.

What's next?

The CSSF states in the CSSF FAQs V9 that:

- UCITS that would be invested in loans must disinvest from those positions by 31 December 2020, taking into account the investors' best interests: and
- The prospectuses of those UCITS offering the opportunity to invest in loans must be updated by 31 March 2021 at the latest in order to no longer provide for this option.

The CSSF FAQs are amended from time to time and the CSSF reserves the right to alter its approach to any matter it covers. Stakeholders are therefore advised to regularly check the website of the CSSF to see if questions have been added and/or positions have been altered.

What is the impact for you?

For your information only.

---

28 September 2020

Company Law/COVID-19 – Law of 23 September 2020 extending measures concerning the holding of meetings in companies and other legal persons published in Memorial A

Background

On 18 March 2020, a grand-ducal regulation declaring a state of emergency and introducing a series of measures as part of the fight against the COVID-19 pandemic was published in Memorial A No. 165 (the «Regulation», latest consolidated version from 12 June 2020, available here only in French). The Regulation entered into force on the same day.

On 20 March 2020, in response to the COVID-19 pandemic, a grand-ducal regulation introducing measures concerning the holding of meetings in companies and other legal persons was published in Memorial A No. 171 (the «Regulation on Company Meetings», available here only in French). The Regulation on Company Meetings entered into force on the same day.

On 25 June 2020, based on the adopted «Bill 7566» (available here only in French), the Luxembourg law of 20 June 2020 extending the measures – until 30 September 2020 – concerning the holding of meetings in companies and other legal persons was published in Memorial A No. 541 (the «First Law on Company Meetings», available here only in French). The First Law on Company Meetings entered into force on 25 June 2020, except for Article 4 thereof which was effective retroactively to 30 May 2020.

What's new?

On 21 September 2020, in response to the persistence of the COVID-19 pandemic, the Luxembourg Minister of Justice submitted «Document 7673/00», which contains

bill 7673 extending the measures provided for in the First Law on Company Meetings («Bill 7673», available here only in French), to the Luxembourg Parliament. All legislative steps in relation to the adopted Bill 7673 are available here (only in French).

On 23 September 2020, based on the adopted Bill 7673, the Luxembourg law of 23 September 2020 on the measures concerning the holding of meetings in companies and other legal persons was published in Memorial A No. 785 (the «Second Law on Company Meetings», available here only in French). The purpose of the Second Law on Company Meetings is to extend the measures concerning the holding of meetings in companies and other legal persons until 31 December 2020.

What's next?

The Second Law on Company Meetings will enter into force on 1 October 2020, thereby repealing the First Law on Company Meetings from that date. The Second Law on Company Meetings will be applicable from 1 October 2020 to 31 December 2020 inclusive.

What is the impact for you?

For your information only.

Netherlands

10 September 2020

Extension of the Emergency Package in response to COVID-19

Background

On 28 August 2020, the government issued a letter to the Lower House of Parliament introducing the third version of the emergency package.

What's new?

The new package will run on into 2021 and is based on three pillars: support, help individuals and companies adapt to new circumstances, and investment.

Detailed information is available here.

What's next?

PwC will keep you updated on further developments.

What is the impact for you?

For your information only.

8 July 2020

Regulatory Reporting/COVID-19 – FCA updates web page on reporting deadline flexibility concerning the submission of certain regulatory returns

Background

On 22 April 2020, the Financial Conduct Authority (the “FCA”) announced reporting deadline flexibility concerning the submission of certain regulatory returns given the impact of COVID-19 (the “April Announcement”, available here).

What’s new?

On 26 June 2020, following up on the April Announcement, the FCA updated its web page entitled “Changes to regulatory reporting during coronavirus” (the “Updated Web Page”).

In this context, the FCA highlights that it will continue to allow flexibility in relation to submission deadlines (up to 2 months from the original due dates) for the regulatory returns listed in this June update (falling due up to and including 30 September 2020), namely:

- Credit union complaints return (“CREDS 9 Annex 1R”);
- Complaints Return (“DISP Annex 1R”); and
- Claims management companies complaints return (“DISP 1 Annex 1AB”).

For regulatory returns listed in the April Announcement but not in this June update, forms falling due after 30 June 2020 should continue to be submitted by their usual deadlines.

For further information and examples, the Updated Web Page is available here.

What’s next?

On the Updated Web Page, the FCA underlines that firms are still expected to submit their regulatory return as soon as possible and should they miss a deadline (in the period up to 30 September 2020), the FCA will send them a reminder letter.

Besides, the FCA stresses that it will continue not to apply the late fee for submissions from small and medium-size businesses, as set out on the Updated Web Page, in the period up to and including 30 September 2020.

Subject to any significant change in the COVID-19 situation, the FCA has no intention of continuing to offer reporting deadline flexibility after 30 September 2020.

What is the impact for you?

For your information only.

7 August 2020

Updated FCA regulated fees 2020/2021

What’s new?

The revised periodic fees to be paid to the FCA in relation to collective investment schemes and AIFs marketed in the UK payable for the period 1 April 2020 to 31 March 2021 will be as follows:

Scheme type	Basic fee (£)	Total funds/ sub-funds aggregate	Fund factor	Fee
Section 264 of the Act, schemes other than non-EEA AIFs recognised under section 272 of the Act	363.50	1-2	1	363.50
		3-6	2.5	908.75
		7-15	5	1,817.50
		16-50	11	3,998.50
		>50	22	7,997.00
Non-EEA AIFs recognised under section 272 of the Act	1,478.50	1-2	1	1,478.50
		3-6	2.5	3,696.25
		7-15	5	7.392.50
		16-50	11	16,263.5
		>50	22	32,527.00

Type of notification	Fee per AIF (£)
Non-EEA AIF marketed by EEA AIFM (or a feeder AIF that is a UK AIF or EEA AIF managed by EEA AIFM where the master AIF is managed by a non-EEA AIFM or is a non-EEA AIF), where the AIFM is not otherwise paying any FCA fee as an AIFM (Regulation 57 namely Article 36 of the AIFMD)	337
AIF marketed by sub-threshold non-EEA AIFM (Regulation 58)	235
AIF marketed by above-threshold non-EEA AIFM (Regulation 59 namely Article 42 AIFMD)	337
Small registered UK AIFMs	663

What is the impact for you?

The UK FCA will issue invoices for their 2020/2021 periodic fees and levies from July 2020 onwards. The UK FCA regulator fees are payable no later than the due date indicated on the invoices that you will receive.

For more details, please refer to the following link: https://www.handbook.fca.org.uk/handbook/FEES/4/Annex4.html

25 August 2020

IFD/IFR – FCA issues Discussion Paper 20/2 on new domestic prudential regime for MiFID investment firms

Background

EU Member States shall apply the provisions of Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 ("IFD", available here) and of Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 ("IFR", available here) on the prudential supervision of investment firms ("IFs") by 26 June 2021.

With the exception of 8 large IFs regulated by the UK Prudential Regulation Authority ("PRA"), the UK Financial Conduct Authority ("FCA") is responsible for the prudential supervision of such IFs in the UK.

In the Brexit context, the FCA supported the overall goals of the EU prudential regime for IFs, and it welcomes the Chancellor's statement in his March 2020 Budget that the UK Government intends to legislate for a UK regime.

What's new?

On 23 June 2020, the FCA issued the discussion paper entitled "A new UK prudential regime for MiFID IFs" (DP20/2 – the "Discussion Paper").

In the Discussion Paper, the FCA sets out its initial views and technical details regarding IFD and IFR. UK IFs, investors and other stakeholders should read the Discussion Paper. The FCA is seeking comments on how best to implement a new set of prudential rules for UK IFs to better reflect their business models and the risk of harm posed to consumers and markets. However, UK IFs should be aware of the scale of the change the IFD/IFR framework represents:

- UK IFs would be subject for the first time to liquidity requirements across the board;
- The levels of initial capital required for authorisation would be updated;
- There would be a brand-new methodology for calculating capital requirements, the K-factor approach;
- There would be new remuneration and disclosure requirements; and
- The FCA has wider expectations for UK solo-regulated IFs.

The list of 35 questions is to be found under Annex 1 to the Discussion Paper on pages 159-161.

For further information, the Discussion Paper is available here.

On 17 August 2020, the FCA hosted a dedicated "Webinar" (accessible here).

What's next?

Feedback on the Discussion Paper should be sent ""to the FCA at dp20-02@fca.org.uk by 25 September 2020 by using the "Response Form" (available here).

Based on the feedback received, the FCA will publish a Consultation Paper later in 2020.

The UK Government will introduce a framework for the new prudential regime for UK IFs.

What is the impact for you?

For your information only.

2 September 2020

PRIIPs Regulation – HM Treasury issues Policy Statement on amendments to onshored PRIIPs Regime

Background

On 29 December 2014, Regulation (EU) No 1286/2014

of the European Parliament and of the Council of 26 November 2014, setting the requirements for a standardised disclosure document known as the key information document (“KID”) that must be provided to retail investors when purchasing particular packaged retail and insurance-based investment products (“PRIIPs”), entered into force (the “PRIIPs Regulation”, the latest consolidated version is available here).

On 8 March 2017, the European Commission issued Commission Delegated Regulation (EU) 2017/653 supplementing the PRIIPs Regulation by laying down regulatory technical standards with regard to the presentation, content (including the methodologies for calculating transaction costs, producing performance scenarios and assessing Summary Risk Indicators (“SRIs”)), review and revision of KIDs and the conditions for fulfilling the requirement to provide such documents (the “RTS”, available here). The RTS will form part of the retained EU law once the United Kingdom (the “UK”) ends the Transition Period on 1 January 2021.

On 1 January 2018, the Packaged Retail and Insurance-based Investment Products Regulations 2017 (the “UK PRIIPs Regulations 2017”, available here), transferring the PRIIPs Regulation into UK law, entered into force. HM Treasury (“HMT”) subsequently onshored the PRIIPs Regulation in the Packaged Retail and Insurance-based Investment Products (Amendment) (EU Exit) Regulations 2019 (the “UK PRIIPs Regulations 2019”, available here) using powers under the European Union (Withdrawal) Act 2018 (the “EU Withdrawal Act”, available here).

On 23 June 2020, the UK Government, in its Financial Services Written Ministerial Statement, announced its intention to bring forward legislation to improve the functioning of the PRIIPs regime in the UK (the “Ministerial Statement”, available here).

What’s new?

On 30 July 2020, HMT published a policy statement providing an update on its proposed approach to bringing forward amendments to the onshored PRIIPs Regulation to avoid consumer harm and provide the appropriate certainty to industry once the UK ceases to be bound by the EU regime (the “Policy Statement”).

These amendments will enable the Financial Conduct Authority (the “FCA”) to make supplementary provisions and amendments to the RTS, and provide the appropriate certainty to the industry from the end of the Transition Period.

HMT intends to make the following changes to the onshored PRIIPs Regulation:

- An amendment enabling the FCA to clarify the scope of the PRIIPs Regulation through their rules;
- An amendment to replace ‘performance scenario’ with ‘appropriate information on performance’ in the PRIIPs Regulation; and
- An amendment enabling HMT to further extend the exemption currently in place for Undertakings for Collective Investment in Transferable Securities (“UCITS”) funds.

For further information, the Policy Statement is available here.

What’s next?

HMT intends to legislate for these amendments when parliamentary time allows.

The proposed amendments target only the most pressing concerns with the PRIIPs Regulation and are intended to ensure that UK retail investors are provided with more appropriate PRIIPs disclosures. In the longer term, HMT intends to conduct a more wholesale review of the disclosure regime for UK retail investors, which will explore, for example, how to harmonise the PRIIPs regime with requirements set out in the Markets in Financial Instruments Directive II (“MiFID II”, available here).

What is the impact for you?

For your information only.

9 July 2020

OECD – Release of global tax reporting framework for digital platforms in the sharing and gig economy

Background

On 3 July 2020, the OECD released a new global tax reporting framework called the Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy ("MRDP").

What's new?

The MRDP is designed to help taxpayers comply with their tax obligations , in key sectors of the sharing and gig economy, while ensuring a level playing field for traditional businesses. They further seek to avoid a proliferation of different and unilateral reporting regimes, allow for the use of novel technology solutions and help create a sustainable environment supporting the growth of the digital economy.

The link is available here.

What's next?

PwC will keep you updated on further developments.

What is the impact for you?

For your information only.

21 August 2020

Securities – IOSCO publishes its Report on the evolution of liquidity provision in equity securities markets

Background

Over the past few years, global financial markets have experienced significant change, very often enabled by the introduction of new technology or the enhanced application of existing technology. These technological changes have had wide-reaching impacts, including on price discovery, and specifically, on changes in the manner in which liquidity is provided and the participants who undertake this role in financial markets.

In the past, formal exchange specialists or market makers provided liquidity, but recently in many jurisdictions new participants have also been assuming this role. This may present both benefits and challenges, in particular, because these new liquidity providers may be subject to fewer or different obligations compared to traditional market makers.

The International Organisation of Securities Commissions ("IOSCO") has explored how liquidity provision has evolved in equity securities markets in recent years by considering responses to a survey of regulatory authorities, trading venues and market intermediaries (the "Survey"). The Survey was seeking information on:

- Types of entities acting as market makers and liquidity providers;
- Applicable regulatory frameworks;
- Obligations (regulatory and/or contractual) imposed on market makers and liquidity providers;
- Benefits, incentives and/or privileges provided;
- Technical features designed to attract or to benefit market makers and/or liquidity providers; and
- Supervisory frameworks (including in relation to conflicts of interest).

What's new?

On 11 August 2020, IOSCO published its report on liquidity provision in the secondary markets for equity securities (FR07/2020 – the "Report"). The Report focuses only on market making and liquidity provision in equity securities and does not extend to other asset classes such as exchange-traded funds or derivatives.

The Report presents a summary of the Survey responses,

including about obligations and incentives, and identifies some common themes with respect to the approaches taken to market making and liquidity provision. It also highlights those themes that regulators could consider to be key elements (the “Key Elements”) of market making programs that may promote the provision of liquidity, strengthen investor confidence and foster fair and efficient markets:

- Registration or the formal role given to market makers and the obligations imposed on them;
- Balancing obligations and benefits;
- Monitoring for compliance with the terms of the program or the agreement; and
- Public disclosure (transparency) about market making programs.

The Report is available here.

What’s next?

IOSCO considers that the information gathered from the Survey for the Report may provide useful ideas for regulators to consider when they evaluate market making programs and/or other liquidity-provision incentive arrangements.

The Report and the Key Elements identified were prepared prior to the COVID-19 pandemic. IOSCO is discussing possible future work relating to the impact of the pandemic on market making and liquidity in equity securities markets.

What is the impact for you?

For your information only.

Notes

Notes

Key GFD Contacts

José-Benjamin Longrée

Partner
PwC Luxembourg
+352 49 48 48 2033
jose-benjamin.longree@lu.pwc.com

Christophe Saint-Mard

ETF Global Distribution Leader
PwC Luxembourg
+352 49 48 48 2134
christophe.saint-mard@lu.pwc.com

Robert James Glover

Partner
PwC Luxembourg
+352 49 48 48 4457
robert.james.glover@lu.pwc.com

Sherry Lu

Manager
PwC Luxembourg
+352 49 48 48 5038
sherry.lu@lu.pwc.com

PwC Luxembourg (www.pwc.lu) is the largest professional services firm in Luxembourg with over 2,800 people employed from 77 different countries. PwC Luxembourg provides audit, tax and advisory services including management consulting, transaction, financing and regulatory advice. The firm provides advice to a wide variety of clients from local and middle market entrepreneurs to large multinational companies operating from Luxembourg and the Greater Region. The firm helps its clients create the value they are looking for by contributing to the smooth operation of the capital markets and providing advice through an industry-focused approach.At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 155 countries with over 284,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at www.pwc.com and www.pwc.lu.
© 2020 PricewaterhouseCoopers, Société coopérative. All rights reserved.
In this document, "PwC" or "PwC Luxembourg" refers to PricewaterhouseCoopers which is a member firm of PricewaterhouseCoopers International Limited, each member firm of which is a separate legal entity. PwC IL cannot be held liable in any way for the acts or omissions of its member firms.