Investment Services Supervision Regulatory Briefing
21 January 2025

1 Foreword

The Investment Supervision Function is responsible for supervising entities under the Investment Services Act. As part of our supervisory duties, we also ensure that our licence holders are adhering to the regulatory changes pertaining to their business.

The purpose of this regulatory briefing is to bring to the attention of the asset management industry a number of important publications issued by the Investment Services Supervision, European Commission, and the European Supervisory Authorities (ESAs) from 16th July 2024 to the 15th December, following the previously issued publication of 16 July 2024.

This briefing does not aim to provide an exhaustive list of all publications. It specifically focuses on key developments such as (i) MFSA updates, (ii) legislative proposals and Regulatory Technical Standards, (iii) consultations, to which the industry is invited to contribute, (iv) updates to question and answer (Q&A) documents and other convergence measures, and (v) publication of guidelines and reports issued by the ESAs.

2 MFSA Updates

Publication of FAQ on the Notified PIF Framework and Related Updates to the NPIF Rulebook

On 4 September 2024, the Authority informed the industry of the publication of a Frequently Asked Questions (FAQ) document regarding the Notified Professional Investor Fund (NPIF) framework. This document consolidates responses to queries raised during the framework's development and subsequent months, providing clarifications on practical implementation of the regime. It is structured into two sections: (a) general NPIF framework questions; (b) those related to NPIF service providers.

Additionally, the MFSA carried out consequential amendments to the Investment Services Rules for NPIFs and related Due Diligence Service Providers.

Implementation of Various EBA and ESMA Guidelines

The purpose of the circular dated 20 November 2024 was to inform the industry regarding a number of amendments made to the Investment Services Rules for Investment Services Providers, through the implementation of a total of 8 ESA guidelines into the national regulatory framework namely:

- Guidelines on the benchmarking exercises on remuneration practices and the gender pay gap;
- Guidelines on the data collection exercises regarding high earners;
- Joint EBA and ESMA Guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP);
- Guidelines on the criteria for the exemption of investment firms from liquidity requirements in accordance with Article 43(4) of Regulation (EU) 2019/2033;
- Guidelines on benchmarking of diversity practices, including diversity policies and gender pay gap, under Directive 2013/36/EU and Directive (EU) 2019/2034;
- Guidelines on resubmission of historical data under the EBA reporting framework;
- Guidelines on the monitoring of the threshold and other procedural aspects on the establishment of intermediate EU parent undertakings under Article 21b of Directive 2013/36/EU;
- Guidelines on funds' names using ESG or sustainability-related terms

Establishment of Single-Family Offices in Malta

The Authority updated its regulatory framework to facilitate the establishment of Single-Family Offices (SFOs) in Malta, identified as a growth opportunity in the financial services sector. SFOs manage the wealth of high-net-worth families and offer comprehensive services like investment management, estate planning, and philanthropy.

Family offices in Malta can operate as Notified Professional Investor Funds (NPIFs) without needing a licensed fund manager, provided they exclusively manage the private wealth of a single family and do not raise external capital. This exemption, introduced by the MFSA, streamlines the regulatory process and reduces administrative burdens while still requiring compliance with certain reporting obligations and anti-money laundering regulations.

Additionally, in a circular dated 27 November 2024, an overview of the framework was provided together with an overview of the revised rulebooks.

Amendments to the Supervisory Returns for Fund Managers and Collective Investment Schemes

In a circular dated 2 December 2024, the Authority announced updates to the Appendix 2B return and the Annual Fund Return for fund managers and collective investment schemes (CISs). These changes aim to enhance supervisory functions in the context of new sustainable finance regulations, particularly the Sustainable Finance Disclosure Regulation (SFDR). The MFSA will continue with its efforts to streamline regulatory reporting in the asset management sector during 2025.

Financial Instruments Survey

The circular of 4 December 2024 highlighted that starting from the reporting year 2024, all Investment Firms providing MiFID services to retail, professional, and eligible counterparties must submit the Financial Instruments Survey annually. This new survey replaces the previous "List of Financial Instruments" and incorporates additional data related to sustainable finance.

Implementation of the MiCA Regulation and its corresponding Guidelines

The Markets in Crypto-Assets Regulation (MiCA) took effect on December 30, 2024, to enhance consumer protection, market integrity, and financial stability by regulating crypto-assets previously governed solely by anti-money laundering (AML) rules.

The circular dated 12 December 2024 was issued to inform the industry about the the amendments to the Investment Services Rules for Investment Services Providers in order to implement MICA and the corresponding Guidelines, as well as launch the MiCA Notification Form for the use of Investment Firms and Asset Managers required to extend the instruments offered under the existing frameworks to include crypto-assets.

3 ESMA Publications

ESMA 2025 Annual Work Programme

The ESMA Annual Work Programme 2025 indicated the priorities of ESMA, namely: implementing new mandates related to sustainable finance, addressing digitalization impacts, and improving regulatory frameworks for capital markets.

ESMA has stated that it will continuously support the development of a single rulebook for the investment management sector by providing technical input to enhance regulatory quality. It aims to promote supervisory convergence among National Competent Authorities (NCAs). Additionally, ESMA aims to negotiate cooperation agreements under the AIFMD with third-country authorities and annually update guidelines on Money Market Fund (MMF) stress testing. Under the revised AIFMD and UCITS Directives, ESMA will develop regulatory technical standards (RTS) related to loan originating AIFs and assess costs charged by UCITS and AIFMs.

Section 2.2.1 highlights ESMA's mandate to provide technical advice on the review of the UCITS Eligible Assets Directive. This review is crucial due to the significant evolution in financial instruments since the directive's inception.

ESMA Consult on Liquidity Management Tools for funds

On July 8, 2024, the European Securities and Markets Authority (ESMA) launched a consultation on liquidity management tools (LMTs) for funds, focusing primarily on the revised Alternative Investment Fund Managers Directive (AIFMD II) and the UCITS Directive. These guidelines aim to enhance liquidity risk management across investment funds, promoting stability and harmonization within the sector.

ESMA's draft Regulatory Technical Standards (RTS) aim to outline the characteristics of various LMTs, such as suspension of redemptions and swing pricing, while also providing guidance on how fund managers should select and calibrate these tools based on their investment strategies and liquidity profiles.
In particular, AIFMD II emphasizes that fund managers must select at least two appropriate LMTs tailored to their fund's specific needs. This selection process is crucial for managing liquidity effectively during market stress situations, ensuring that funds can meet redemption requests.

Report on the Principal Adverse Impact disclosures under the Sustainable Finance Disclosure Regulation

This report on Principle Adverse Impacts (PAIs), issued on 30 of October 2024 builds on the previously issued report dated 30 June 2024 and focuses on the implementation of PAI - entity level disclosures by ALL Financial Market Participants (FMPs) based on the FMPs choice on disclosing and considering PAIs in accordance with the Level 2 Framework.

The report also builds up on the Joint ESAs Report of 28 July 2022, and the Joint ESAs Report of 28 September 2023 by further identifying the challenges for FMPs to use voluntary disclosures whilst also providing a list of good and bad practices when it comes to voluntary disclosures and a list of recommendations to the EU Commission and NCAs.

ESMA Guidelines on funds' names using ESG or sustainability-related terms

ESMA's Guidelines on funds' names using ESG or sustainability-related terms aim to protect investors from greenwashing by establishing clear criteria for the use of certain terms/key words in the creation of fund names. These guidelines require that at least 80% of a fund's investments align with its stated ESG characteristics or sustainable objectives which would thus justify the use of such sustainability related terms within the fund's name. Additionally, they set exclusion criteria for certain terms to ensure clarity and transparency. These guidelines came into effect on 21 November 2024.

These guidelines apply to UCITS management companies, including any UCITS which has not designated a UCITS management company, Alternative Investment Fund Managers including internally managed AIFs, EuVECA, EuSEF and ELTIF and MMFs managers as well as competent authorities.

ESMA Q&As on the application of the Guidelines on funds' names

ESMA released new Q&As on 13 December 2024 that provide clarity on the application of its Guidelines regarding the use of ESG or sustainability-related terms in fund names. These Q&As address three key areas: green bonds, meaningful investment in sustainable investments, and controversial weapons.

These clarifications aim to facilitate a consistent understanding of the Guidelines, particularly as the European Green Bonds Regulation approaches implementation. ESMA emphasises that sectoral legislation, such as the AIFMD and UCITS Directive, takes precedence in these matters.

4 EBA Publications

The EBA updates its list of Common Equity Tier 1 instruments

Since the previous update in December 2022, references to grandfathered instruments have been removed, as the grandfathering provisions under the Capital Requirements Regulation (CRR) ended on December 31, 2021. Furthermore, several new instruments have been added, while outdated ones have been eliminated. The list has also been updated to incorporate changes in relevant national legislation.

5 EU Commission Publications

Letta Report "Much More Than a Market" & Draghi Report on The Future of European Competitiveness

Enrico Letta's report "Much More Than a Market" and Mario Draghi's "The Future of European Competitiveness" both address critical challenges facing the European Union in adapting to a changing global landscape. Letta's report stresses the EU's need to evolve beyond a purely economic entity by promoting shared values and enhancing the single market through proposals like a "fifth freedom" in research and innovation, reducing regulatory burdens for SMEs, and boosting economic security. Letta also highlights the role of the social economy in strengthening the EU's social dimension.

Draghi's report, meanwhile, focuses on Europe's slowing growth and productivity gap with the US. It identifies key areas for action, such as closing the innovation gap, boosting decarbonisation efforts, and reducing dependencies. Draghi calls for a coordinated industrial strategy, increased public and private investment, and stronger cooperation among EU members to foster competitiveness and secure sustainable growth.

Both reports emphasize the need for unity, innovation, and strategic adaptation to ensure Europe's future prosperity.

Publication of European Long-Term Investment Fund (ELTIF) Regulatory Standards

On July 19, 2024, the European Commission adopted Regulatory Technical Standards (RTS) to complement the revised European Long-Term Investment Fund (ELTIF) Regulation. These standards clarify key aspects of ELTIF operations, including the alignment of fund lifecycles with asset lifecycles, redemption policies, and liquidity management tools.

The RTS specify criteria for using financial derivatives for hedging risks and outline conditions for matching transfer requests among investors. Additionally, they require detailed cost disclosures related to ELTIFs.