

Simmons & Simmons

Irish Funds & Regulatory Quarterly Update
1 July 2021 – 30 September 2021



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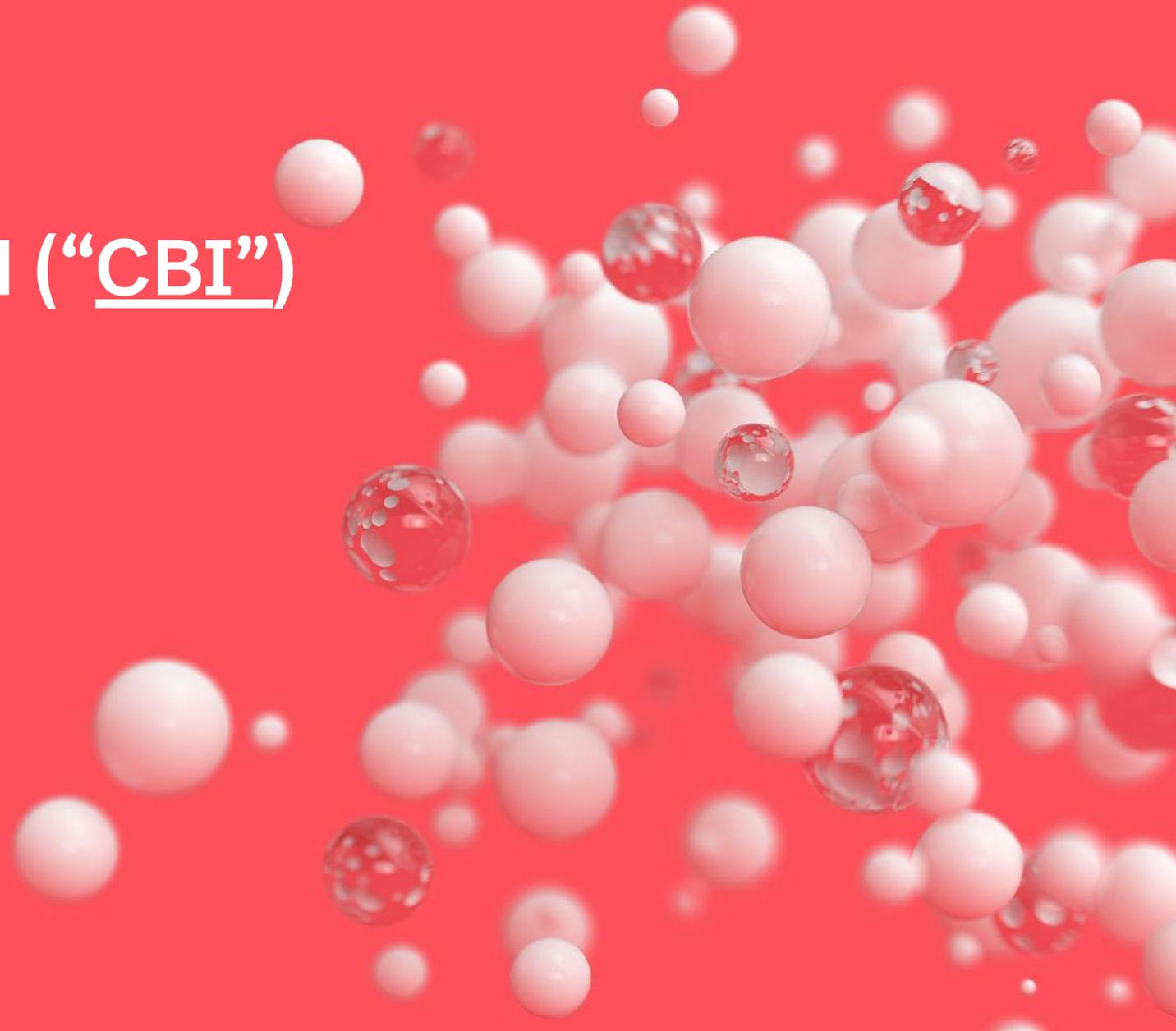
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Central Bank of Ireland (“CBI”) - Updates



Investing in crypto – CBI gives its view

The CBI has updated its [AIFMD Q&A](#) and [UCITS Q&A](#) confirming that it is open to considering submissions regarding investment by QIAIFs in crypto assets but that it's "highly unlikely" that UCITS or RIAIFs investing directly or indirectly in crypto assets would be approved at this point. This is because that given the specific risks associated with crypto assets & the potential that retail investors may be unable to appropriately assess the risks in a fund with such exposures.

With regards to UCITS, the CBI must be satisfied that:

- assets in which a UCITS, RIAIF or QIAIF invests are capable of meeting the eligible asset criteria for UCITS; and indirect exposure to the assets is capable of being appropriately risk managed.

So far, the CBI hasn't been satisfied that crypto assets satisfy either test and that some crypto assets can "present significant risks, including liquidity risk; credit risk; market risk; operational risk (including fraud and cyber risks); money laundering/terrorist financing risk; and legal and reputation risks".

It would appear that the CBI is open to the possibility of a QIAIF investing in crypto assets subject to a pre-submission being made which satisfies the CBI that the risks with regard to crypto assets can be appropriately risk managed by the AIFM.

Interestingly, the CBI has restricted its comments to crypto assets which are "based on an intangible or non-traditional underlying" rather than to traditional assets (such as financial instruments or commodities) which have been tokenised, which the CBI noted may have a different risk profile.

The CBI will be keeping its approach to crypto assets under review. *For further information please see link to our [Simmons Insights Article on this topic](#).*

Update	1 July – 30 September 2021
Regional impact	Ireland
Sector Focus	Asset Management & Investment Funds
Links	Simmons Insights Article

CBI announces updates to PCF Functions

On 22 September, the CBI announced its proposal to amend regulations around certain Pre-Approval Control Functions (“PCF”) under the Fitness and Probity regime by way of a Notice of Intention.

Proposed Changes

PCF-2

The CBI are proposing to split the PCF-2 function to distinguish between Non-Executive Directors (PCF-2A) and Independent Non-Executive Directors (PCF-2B).

Impacts

This change will affect all Irish regulated financial service providers. Any person currently performing a PCF2 function will be re-designated as either a PCF-2A or PCF-2B as applicable.

Next Steps

All Irish regulated financial service providers will be required to notify the CBI of the individuals impacted by this change and confirm that each of the individuals have complied with all due diligence required by the CBI to perform such PCF functions.

PCF-15

To remove the current PCF-15 function (i.e. Head of Compliance with the responsibility for Anti-Money Laundering and Counter Terrorist Financing Legislation) and replace it with a dedicated PCF-52 (Head of Anti-Money Laundering and Counter Terrorist Financing) function. Please note that the PCF-12 (i.e. Head of Compliance) will be retained.

Next Steps

Individuals currently performing a PCF-15 function will be required to notify the CBI. The PCF-15 role will be end dated and all Irish regulated financial services providers will be required to notify the CBI of the individual appointed to perform the new PCF-52 function. Further, confirmation by the regulated financial service provider that each of the individuals have complied with all due diligence required by the CBI to perform such PCF functions. No changes or notifications are required to be made to any individual performing PCF-12 functions.

Update	1 July – 30 September 2021
Regional impact	Ireland
Sector Focus	Asset Management & Investment Funds
Links	CBI announcement

CBI announces updates to PCF Functions continued

PCF-16

The CBI intends to expand the PCF-16 function from its current range of managers of branches of Irish regulated financial services providers within the European Economic Area (“EEA”) to managers of branches of Irish regulated financial services providers based anywhere in the world.

The CBI states “*The Central Bank notes that these individuals are also currently subject to the fit and proper requirements of the host regulator responsible for the supervision of the relevant branches. While, as a PCF, it will not be permissible for a branch manager of a branch in a non-EEA country to be appointed without the Central Bank’s approval, the Central Bank does not envisage that this amendment would have any other impact on the role of the Central Bank with regard to the supervision of such branches.*”

Next Steps

This change will not effect any individuals currently performing the PCF-16 function. Any non-EEA based branch managers will be required to submit confirmation to the CBI that they have reviewed and assessed their requirements under the fitness & probity regime. It does not appear that the CBI will require individual questionnaires to be submitted in this regard

PCF-31

To discard with the current PCF-31 (Head of Investment) function due to the apparent duplication between the PCF-31 function and the PCF-30 (Chief Investment Officer) function.

Next Steps

The CBI will automatically re-designate all individuals currently performing a PCF-31 function to a PCF-30 function. This process will commence after the proposed amended regulations come into effect. Any new appointment of an individual seeking to perform a PCF-30 function will be subject to the full application requirements.

Update	1 July – 30 September 2021
Regional impact	Ireland
Sector Focus	Asset Management & Investment Funds
Links	CBI announcement

Next Steps – CBI Feedback

Stalk-holders are invited to provide feedback to the CBI by 20 October 2021 on the this intended proposal by emailing governanceconsultations@centralbank.ie

CBI updates to Beneficial Ownership Register

On 20 August 2021, the CBI advised of upcoming changes to the beneficial ownership register in respect to ICAVs and unit trusts.

These changes include:

- Investment Limited Partnerships (“ILPs”) and Commons Contractual Funds (“CCFs”) in existence post 1 March 2021 are required to file beneficial ownership details within 6 months from the date of authorisation.
- ILPs and CCFs in existence on 1 March 2021 or prior must file on the Beneficial Ownership Register by 1 September 2021.

From Q4 the CBI will require the submission of the following beneficial ownership information in respect to certain Financial Vehicles:

- PPSN data for beneficial owners;
- CBI Reference Number (as applicable to non-PPSN holders);
- date the individual left the beneficial ownership register of the CFV (as applicable); and
- amendment to wording of PCF question.

Further information please see link to the CBIE’ Beneficial Ownership Register below.

Update	1 July – 30 September 2021
Regional impact	Ireland
Sector Focus	Asset Management & Investment Funds
Links	CBI Beneficial Ownership Register



Timing

Funds in existence post 1 March 2021 have 6 months to file details.

Funds in existence on 1 March 2021 or prior have until 1 September to file.

From Q4 CBI will require the information highlighted above to be filed.

CBI updates to AIFMD Q&A and UCITS Q&A

On 10 September 2021, the CBI issued its updated versions of its AIFMD Q&A and UCITS Q&A (the [Q&As](#)).

ID 1147 has been included in the AIFMD Q&A and ID 1101 now included in the updated UCITS Q&A. These new provisions contained in the Q&As clarify the notification requirements for Alternative Investment Fund Managers and UCITS management companies where they operate or plan to operate as a third-party management company.

The Q&As highlight that where an AIFM and management company takes on any new business, fund management companies need to have sufficient resources to enable them to carry out their functions to the required standard, taking into account the nature, scale and complexity of their business.

This is particularly relevant to third party management companies where the new business may change the nature or increase the number of delegate relations and therefore amplify the complexity of operations.

The CBI considers these changes to be material that affecting the basis on which authorisation was granted that these changes are required to engage proactively with the CBI.

As part of this engagement, the management company will be required to submit various supporting documents (see updated Q&As for further information).

For further information a link to the CBI's updated Q&As has been included below.

Update	1 July – 30 September 2021
Regional impact	Ireland
Sector Focus	Asset Management & Investment Funds
Links	41st edition AIFMD Q&A and 33rd edition UCITS Q&A

CBI Markets Update

The CBI published its most recent issue of their Markets Update (the “Update”). The Update focuses on:

- The CBI publishes a notice of intention in relation to the application of the European Securities Markets Authority (“[ESMA](#)”) Guidelines on stress test scenarios under the Money Market Fund (“[MMF](#)”) Regulation.
- Anti-Money Laundering and Countering the Financing of Terrorism (“[AML/CFT](#)”) Guidelines for the Financial Section (Outlined in the further detail in the previous page).
- International Organization of Securities Commissions (“[IOSCO](#)”) published the results of examination of ETF behaviours during COVID-19 induced market stresses.

The Update also includes market updates from ESMA.

For further information please see relevant links included below.

Update	1 July – 30 September 2021
Regional impact	Ireland and EU
Sector Focus	Asset Management & Investment Funds

Links - CBI

- [CBI Update – Issue 11](#)
- [Notice of intention in relation to the application of the ESMA Guidelines on stress test scenarios under the MMF regulation.](#)
- [AML/CFT Guidelines](#)
- [IOSCO results of ETF behaviour](#)

Links - ESMA

- [ESMA publishes its report on the use of FinTech by CSDs](#)
- [ESMA publishes data for the systematic internaliser calculations](#)
- [ESMA makes new bond liquidity data available](#)
- [ESMA makes first CTP data available](#)
- [ESMA publishes MiFID II/MiFIR Annual Review Report on RTS 2](#)

CBI end of year submission deadlines

The CBI has stated that from 2021, the CBI will not be issuing end-of year submission deadlines for investment funds seeking authorisation and/or approval.

The CBI have confirmed that application will now be reviewed in line with the authorisation process/timeframes applicable throughout the year.

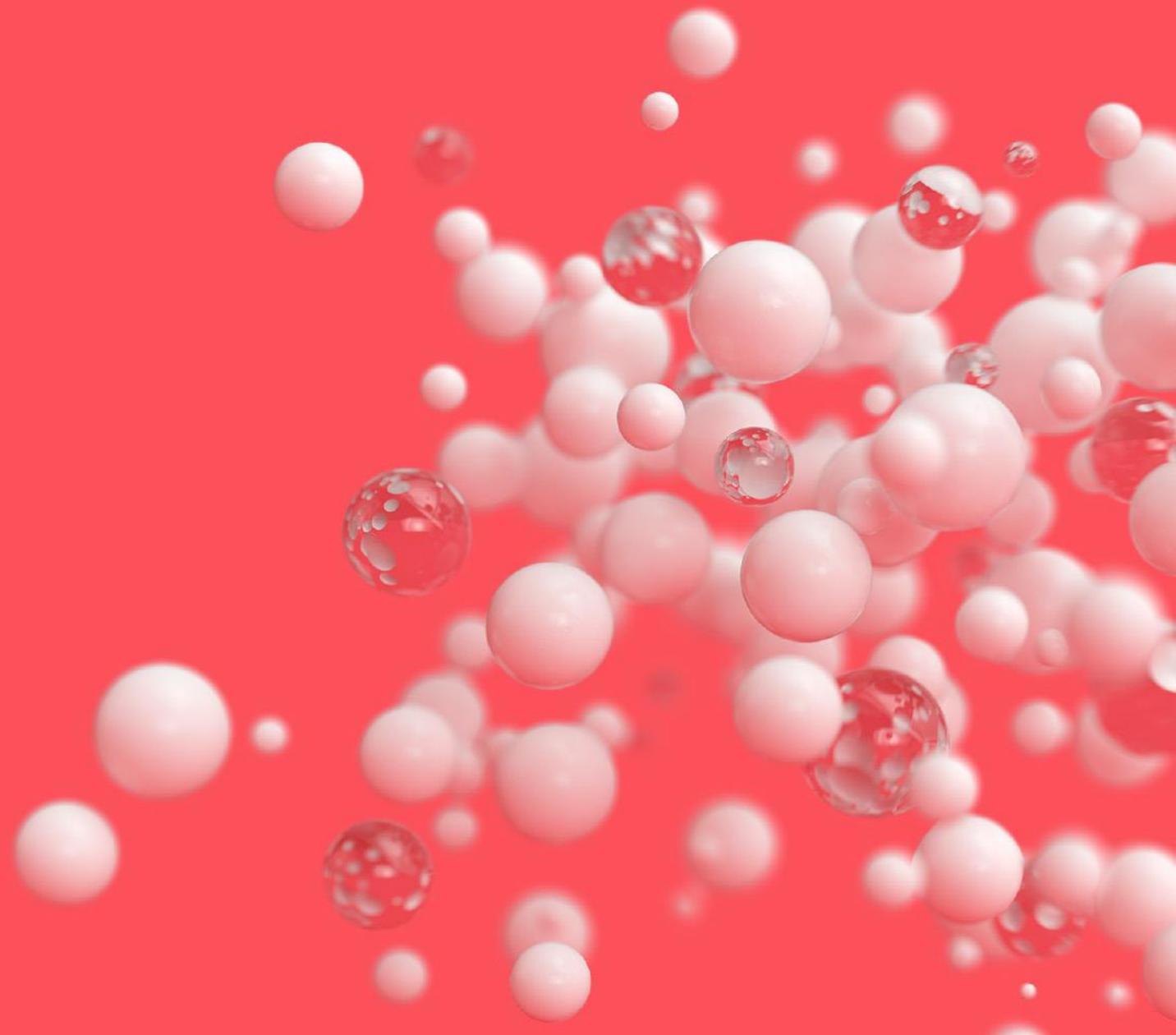
The CBI will provide further notification later this year in respect to the timeframes applicable for:

- QIAIF authorisations;
- Approvals;
- notings;
- ICAV registrations; and
- Revocation application.

Update	1 July – 30 September 2021
Regional impact	Ireland
Sector Focus	Asset Management & Investment Funds



Irish Government



SEAR update: Central Bank (Individual Accountability Framework) Bill

The general scheme of the Central Bank (Individual Accountability Framework) Bill (the “[Bill](#)”), which will introduce SEAR into Irish law, was published on 28 July 2021. The Bill contains four main elements:

1. The Senior Executive Accountability Regime (“[SEAR](#)”);
2. Conduct Standards;
3. Fitness and Probity Regime; and
4. Enforcement, investigations and sanctions.

Scope: as anticipated, it is intended that SEAR will apply initially to:

- Credit institutions (excluding credit unions);
- Insurance undertakings (excluding reinsurance undertakings, captive (re)insurance undertakings and Insurance Special Purpose Vehicles);
- MiFID firms which underwrite on a firm commitment basis and/or deal on own account and/or are authorised to hold client monies/assets; and
- Third country branches of the above.

For further information on the Bill please see the link to our [Simmons Insight Articles](#) below.

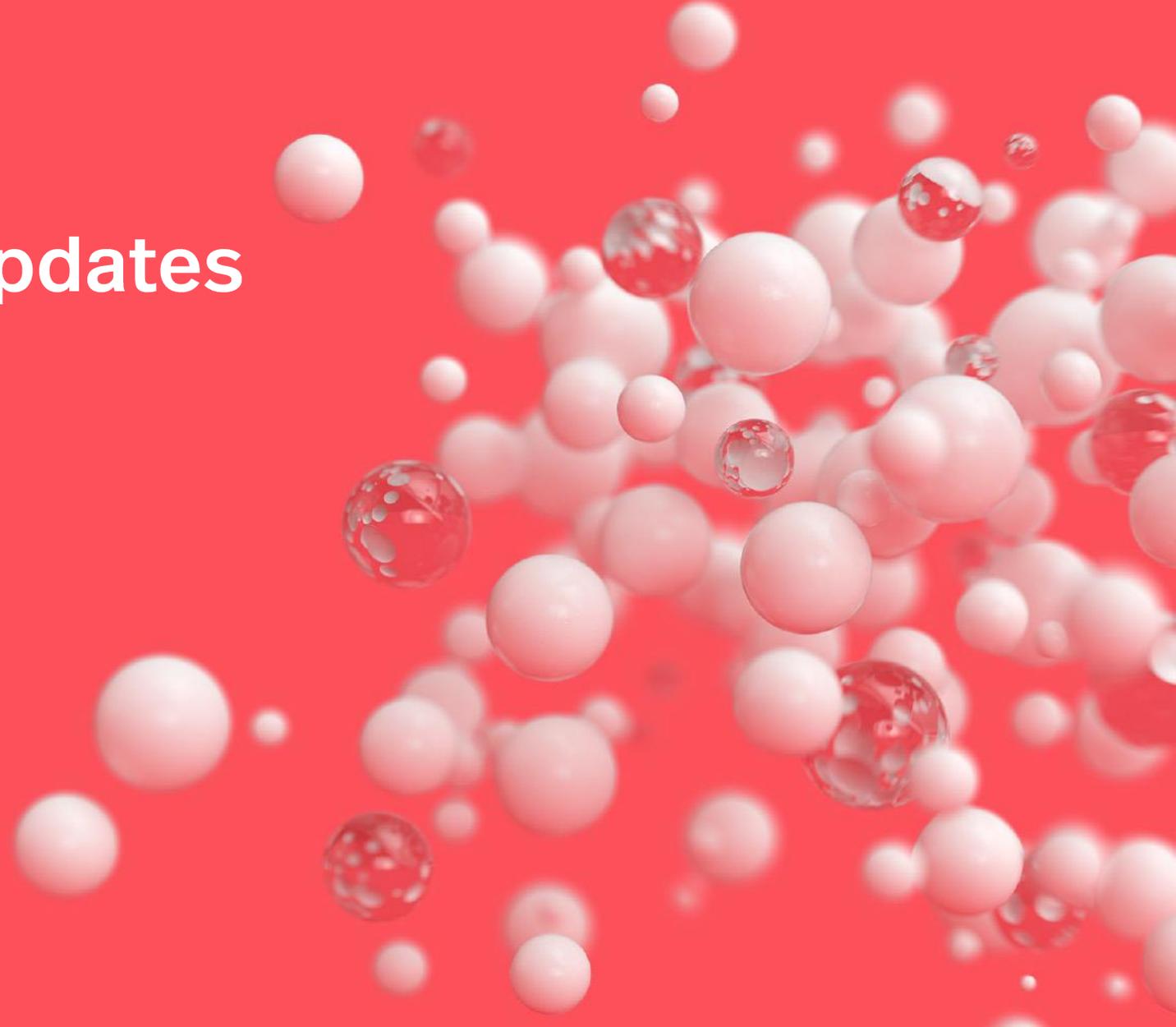
Update	1 July-30 September 2021
Regional impact	Ireland
Sector Focus	Financial Institutions and Asset Management and Investment Funds
Links	Simmons Insight Article dated 29 July 2021 and Simmons Insight Article dated 4 August 2021



Timing

The Minister for Finance has said he hopes to have the new regime fully implemented within 12 to 18 months.

European Union (EU) Updates



SFDR: Commission delays Level 2 RTS to 1 July 2022 (an update)

The Commission has announced its intention to delay application of the Level 2 measures under SFDR by a further six months to July 2022.

A copy of [the Commission's letter](#) of 8 July 2021, sent to the Chair of the European Parliament's ECON Committee and the president of the Council of the EU's Ecofin Council is attached.

What does the Commission say?

In it, the Commission noted:

- it had not been able to adopt the RTS (see below) submitted on 4 February 2021 by the European Supervisory Authorities (“ESAs”) within the usual three month period because of their 'length and technical detail', while six further RTS which the ESAs are currently developing (see below) - some of which amend the RTS submitted in February - were not submitted to the Commission by the original deadline of 1 June 2021.

As a result, the Commission intends to:

- 'work intensively' to adopt the six further RTS referred to above as soon as possible once they are submitted;
- incorporate all 13 of the above RTS into a single delegated act; and
- put back the date of application of the Level 2 measures by six months, from 1 January to 1 July 2022.

What do the RTS concerned cover?

The RTS submitted in February 2021 supplement the Level 1 text in respect of disclosures in relation to:

- the 'do no significant harm' principle (Article 2a(3));
- adverse sustainability impacts (entity level) - climate and other environment-related matters (Article 4(6));
- adverse sustainability impacts (entity level) - social and employee, human rights, anti-corruption and anti-bribery matters (Article 4(7));
- pre-contract disclosures for Article 8 products - promotion of environmental or social characteristics (Article 8(3));
- pre-contract disclosures for Article 9 products - promotion of sustainable investments (Article 9(5)).

SFDR: Commission delays Level 2 RTS to 1 July 2022 (an update) continued

What do the RTS concerned cover? (contd.)

- website disclosures - promotion of environmental or social characteristics and sustainable investments (Article 10(2)); and
- periodic reports - promotion of environmental or social characteristics and sustainable investments (Article 11(4)).

The remaining RTS being developed cover disclosures in relation to:

- pre-contract disclosures for Article 8 products - promotion of environmental or social characteristics (Article 8(4));
- pre-contract disclosures for Article 9 products - promotion of sustainable investments (Article 9(6)); and
- periodic reports - periodic reports - promotion of environmental or social characteristics and sustainable investments (Article 11(5)).

For further information as to what each of the RTS referred to above covers, please see our [SFDR Tracker](#) (in particular, Table (b) in the Annex).
the Annex).

For further information please see the link to our Simmons Insights Article below.

Update	1 July to 30 September 2021
Regional impact	EU, EEA
Sector Focus	Financial Services Regulation, Asset Management and Investment Fund, Institutional Managers, Hedge Fund Managers
Links	Simmons Insights Article



The Taxonomy Regulation

The EU's [Regulation on the establishment of a framework to facilitate sustainable investment](#) (the "[Taxonomy Regulation](#)") was [published](#) in the Official Journal of the EU on 22 June 2020.

What does it do?

Given the range of interpretations by different Member States as to what counts as a 'sustainable' investment, the European Commission considered that a common taxonomy was needed. The Taxonomy Regulation establishes a classification system (or taxonomy) which provides businesses with a common language to identify whether or not a given economic activity should be considered "environmentally sustainable". This, then, allows it to be determined how far an investment is environmentally sustainable, or 'green'.

Standardising the concept of environmentally sustainable investment across the EU is meant to both facilitate investment in environmentally sustainable economic activities and help economic operators attract investment from abroad more easily.

An economic activity will be considered to be "environmentally sustainable" where it:

- contributes substantially to any of a series of defined environmental objectives;
- doesn't significantly harm any of the environmental objectives;
- complies with a series of minimum social safeguards; and
- complies with specified performance thresholds known as "technical screening criteria" (or TSC).

The first two points above refer to 'environmental objectives' - the Taxonomy Regulation defines these as being:

- climate change mitigation;
- climate change adaptation;
- sustainable use and protection of water and marine resources;
- transition to a circular economy;
- pollution prevention and control; and
- protection and restoration of biodiversity and ecosystems.

The Taxonomy Regulation (continued)

When does it apply from?

The key provisions of the Taxonomy Regulation apply from:

1 January 2022 for provisions in respect of:

- climate change mitigation; and
- climate change adaptation.

1 January 2023 for provisions in respect of:

- sustainable use and protection of water and marine resources;
- transition to a circular economy;
- pollution prevention and control; and
- protection and restoration of biodiversity and ecosystems.

What next for product level disclosures?

Where a product does not take into account the Taxonomy Regulation's criteria for environmentally sustainable economic activities this must be set out in the pre-contractual and periodic disclosures.

Where a product is in scope of Taxonomy Regulation's criteria for environmentally sustainable economic activities pre-contractual disclosures must disclose:

1. information on the environmental objective(s) or environmental objectives to which the product contributes (by the deadlines set out above);
2. the intended portion (as a % of AUM) of its sustainable investment allocation that aligns with the Taxonomy Regulation, split between enabling and transitional activities.
3. in the product's financial reports published after 1 Jan 2022, ex-post Taxonomy Regulation -alignment disclosures.

Note: further Taxonomy-related disclosures will apply once SFDR Level 2 RTS takes effect.

The Taxonomy Regulation (continued)

Next Steps

Financial market participants should now commence drafting the pre-contractual and annual reporting disclosures to ensure compliance with the Taxonomy Regulation and the related disclosures by 1 January 2022.

For further information, please see link below to our Overview of the EU Framework Regulation (Taxonomy)

Update	1 July to 30 September 2021
Regional impact	Ireland
Sector Focus	Financial Institutions and Asset Management and Investment Funds
Links	Overview of the EU Framework Regulation



Timing

By 1 January 2022, prospectuses/supplements for funds will need to be updated. As such taking into account the holiday period and the various public holidays, we would recommend that all prospectus filings should be made in November 2021 for UCITS funds and by December 2021 for AIF funds. At this stage it is unclear whether the CBI will undertake a full review or whether the CBI will once again undertake a fast tracked approach to deal with the sheer volume of filings which will be required. The CBI are expected to issue guidance in this regard.

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