

Regulatory Compliance Update

Q1 2023

Issue N°: 04

17 April 2023



Introduction

Our Mamo TCV Regulatory Compliance Quarterly Update is intended to keep Maltese regulated entities informed of regulatory changes and developments taking place mainly in the local financial services space.

In this issue, we focus on the sector specific and cross-sectoral regulatory updates relating to Investment Services, Asset Management¹, Insurance, and Company Service Providers.

Mamo TCV's team of regulatory and compliance advisors supports authorised persons and their compliance functions to remain compliant with their obligations in the ever-evolving regulatory landscape.

Get in touch with us to learn more about how we can help you.

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¹Asset Management shall refer to Funds, Fund Managers and their service providers.

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SECTOR SPECIFIC REGULATORY UPDATES

1.0 INVESTMENT SERVICES

1.1 Publication of Investment Firm Guidelines

On 3 January 2023, the Malta Financial Services Authority ('MFSA') issued a [Circular](#) to bring to the attention of all licensed Investment Firms several developments related to the European Supervisory Authorities' ('ESAs') Guidelines that had been published.

The European Banking Authority ('EBA') published [guidelines](#) on the criteria for the exemption of Investment Firms from liquidity requirements. The guidelines enlist the criteria that need to be satisfied for competent authorities to exempt small and non-interconnected Investment Firms from liquidity requirements. The guidelines became applicable as from 28 November 2022 and are applicable to Class 3 Investment Firms.

Moreover, the EBA published [guidelines](#) on the benchmarking exercises on remuneration practices and the gender pay gap under Directive (EU) 2019/2034. These guidelines became applicable as from 31 December 2022 and are applicable to Class 1 and Class 2 Investment Firms.

[Guidelines](#) on the data collection exercises regarding high earners under Directive 2013/36/EU and under Directive (EU) 2019/2034 were published by the EBA, which guidelines became applicable as from 31 December

2022. The [EBA guidelines issued on 16 July 2014](#) were amended and became applicable also to Class 1 and Class 2 Investment Firms. Apart from the confirmation requested in the MiFID Quarterly Return, Investment Firms that fall within the scope of these guidelines must also submit data, on an annual basis, related to high income earners within the firm.

The EBA and the European Securities and Markets Authority ('ESMA') published [joint guidelines](#) on common procedures and methodologies for the supervisory review and evaluation process under Directive (EU) 2019/2034. These guidelines are applicable to all Investment Firms and the applicability date of these guidelines is still to be issued.

The MFSA encourages Investment Firms to familiarise themselves with these developments and ensure that any deficiencies are addressed as soon as possible.

1.2 The European Market Infrastructure Regulation

On 3 January 2023, the MFSA issued a [Circular](#) addressed to all market participants which fall within the scope of the European Market Infrastructure Regulation ('EMIR').

ESMA published the EMIR REFIT package on 20 December 2022 which includes a [Final Report](#) on the Guidelines for reporting under EMIR REFIT, and [validation rules](#) to notify reporting errors and omissions. The Guidelines for reporting under EMIR will further harmonise reporting under EMIR and will promote the effective monitoring of the system risk.

Effective date: *The Guidelines for reporting under EMIR will enter into application on 29 April 2024.*

1.3 ESMA's New Consultation Paper on the Manual on Post-Trade Transparency

On 19 January 2023, ESMA issued a new [consultation paper](#) seeking to obtain feedback on certain technical issues for ESMA to be able to provide further clarifications and guidance through its future manual on the post-trade transparency regime. Interested parties were invited to send their feedback to ESMA by 31 March 2023.

Following the above, ESMA will analyse the feedback received from interested parties in relation to the consultation, and intends to publish a final report and the manual on post-trade transparency after the endorsement of the reviewed Commission Delegated Regulation (EU) 2017/587 and Commission Delegated Regulation (EU) 2017/583 by all the co-legislators.

1.4 Transaction Reporting Obligations in terms of MiFIR

On 2 February 2023, the MFSA issued a [Circular](#) mainly to address queries relating to the transaction reporting obligation arising from article 26 of the Markets in Financial Instruments Regulation ('[MiFIR](#)'). Investment Firms are to take reasonable steps to verify the accuracy, timeliness and completeness of reports which are submitted on their behalf.

The MFSA requested all Investment Firms to review without delay their systems and assess their level of compliance with MiFIR and the Markets

in Financial Instruments Directive ('[MiFID II](#)').

Investment Firms failing to submit timely, accurate, and complete transaction reports will be in breach of article 26 of MiFIR and this could warrant regulatory action.

1.5 MiFIR Transaction Reporting Error Notification Form

On 1 March 2023, the MFSA issued a [Circular](#) addressed to Investment Firms, Credit Institutions providing investment services and/or performing investment activities, and market operators including any trading venues they operate.

In relation to the transaction reporting obligation arising from article 26 of the MiFIR, the MFSA noted that any errors or omissions in transaction reports submitted to the MFSA should be notified using a specific [error notification form](#) that is found on the MFSA's website.

Notification should be made immediately to the MFSA once an error or problem has been detected without awaiting to resolve or rectify the detected problem before informing the MFSA.

1.6 The Securitisation Regulation

On 16 March 2023, the MFSA issued a [Circular](#) on the Securitisation Regulation (Regulation (EU) 2017/2402) addressed to all interested stakeholders.

Information relating to securitisations meeting the requirements on simple, transparent, and standardised criteria as set out in the Securitisation Regulation, must be reported to ESMA by means of

a specific template. In this regard, ESMA introduced [implementing technical standards](#) to determine the templates to be utilised for the provision of the required data.

In terms of article 27(5) of the Securitisation Regulation, *ESMA shall maintain on its official website a list of all securitisations which the originators and sponsors have notified to it as meeting the requirements of articles 19 to 22 or articles 23 to 26 of the Securitisation Regulation.* In this regard, ESMA has published an [updated list](#) in line with this requirement.

2.0 ASSET MANAGEMENT

2.1 Amendments Affecting AIFMD Reporting Submissions

On 16 January 2023, the MFSA issued a [Circular](#) addressed to Alternative Investment Fund Managers, De-Minimis Alternative Investment Fund Managers, Self-Managed Alternative Investment Funds, and Self-Managed Professional Investor Funds (hereinafter referred to as 'AIFMs').

The MFSA informed AIFMs of the various important changes related to the submission of Annex IV and Annex 5 AIFMD returns. Amongst the various important changes, the MFSA noted that a new licence number will automatically be allocated to all AIFMs and Investment Funds domiciled in Malta.

Effective date: *As from 23 January 2023, any submissions made must refer to the new licence number.*

2.2 The Proposed Establishment of a Framework for Notified Professional Investor Funds

On 16 January 2023, the MFSA launched a stakeholder consultation on the proposed establishment of a novel framework for Notified Professional Investor Funds. The aim behind such framework is to improve the regulatory platform for Professional Investment Funds by means of streamlined, pragmatic and risk-based policymaking.

Notified Professional Investor Funds will be subject to a notification process and will therefore not be licensed by the MFSA. Interested parties were encouraged to send their comments by email in relation to the above-mentioned proposed framework by not later than 31 January 2023, which date was later extended to 17 February 2023.

2.3 Revision of the AIFMD Reporting IT Technical Guidance

ESMA issued an updated version of the [AIFMD IT Technical Guidance](#) (the 'Revised Guidelines'). The Revised Guidelines introduce new validation rules to ameliorate data quality by making existing reporting fields mandatory.

AIFMs must use the Revised Guidelines when submitting the AIFMD Returns, starting from submissions with period ending 31 December 2023.

AIFMs must evaluate the changes made to the Revised Guidelines to ensure that their AIFMD reporting is in line with the novel validation controls.

Effective date: *The Revised Guidelines will be applicable as from November 2023.*

2.4 The Covered Bonds Directive

The Covered Bonds Directive (Directive (EU) 2019/2162) establishes principles for covered bonds with the aim to harmonise the supervision and treatment of such instruments across the EU Member States.

Directive (EU) 2019/2162 mainly lays requirements related to the issuing of covered bonds, establishes structural features of covered bonds, and lays down principles on the public supervision and publication requirements in relation to covered bonds.

Various amendments were made to Part BII of the Investment Services Rules for Retail Collective Investment Schemes in relation to investments by UCITS in covered bonds to transpose article 28 of the Covered Bonds Directive.

Effective date: *The amendments carried out to Part BII of the Investment Services Rules for Retail Collective Investment Schemes entered into force on 18 March 2023.*

2.5 Valuation of UCITS and Open-Ended AIFs

On 24 March 2023, the MFSA issued a [Circular](#) on its findings discovered during the ESMA common supervisory action on valuation of UCITS and open-ended AIFs.

Amongst others, the MFSA evaluated the fund managers' compliance with the valuation-related requirements and concluded that although the overall level of compliance was satisfactory, there was still room for improvement in certain fundamental areas.

The MFSA published its findings to make the fund management industry aware of

its supervisory expectations. Fund managers must examine their procedures and governance structures and take the necessary actions to resolve any shortcomings.

The MFSA emphasised the importance of establishing valuation policies and procedures that are in conformity with the nature of the fund and to avoid a one size fits all approach.

3.0 INSURANCE

3.1 MFSA issues Proposed Amendments to the Insurance Distribution Rules

The MFSA began a consultation process on its proposed amendments to the Insurance Distribution Rules (hereinafter referred to as the "IDR"), which process commenced on 26 January 2023 and closed on 8 March 2023.

Among the proposed amendments were proposed changes to Chapters 1, 2, 4, 8, 9 and 10 of the IDR.

A detailed description of the proposed amendments can be found in the [Consultation Document](#).

3.2 MFSA issues Proposed Amendments to the Insurance Business Act and the Insurance Distribution Act

The MFSA issued a [Consultation Document](#) on 22 February 2023, informing the industry of proposed amendments to the Insurance Business Act, and the Insurance Distribution Act (hereinafter referred to as the "IDA").

The primary amendment proposed through this Consultation Document is for companies and enrolled persons

under the IDA forming part of a group of companies to be able to share confidential client information with entities within the same group. This was also proposed to extend to Maltese branches or subsidiaries of multinational groups.

The proposed sharing of this confidential client information is subject to certain qualifications.

3.3 EIOPA published a Supervisory Statement on the use of Governance Arrangements in Third Countries

The European Insurance and Occupational Pensions Authority (hereinafter referred to as "EIOPA") published a [Supervisory Statement](#) on the use of governance arrangements in third countries to perform functions or activities. In light of this Statement, relevant undertakings are expected to assess their corporate substance within the EU.

The EIOPA Statement may be accessed [here](#).

4.0 COMPANY SERVICE PROVIDERS

4.1 2023 Risk Evaluation Questionnaire

On 1 March 2023, the Financial Intelligence Analysis Unit ('FIAU') issued a [statement](#) to inform subject persons that the 2023 Risk Evaluation Questionnaire ('REQ') is available on the Compliance and Supervision Platform for Assessing Risk ('CASPAR') portal for completion.

The FIAU informed subject persons that the completed REQ can only be submitted through the CASPAR portal.

The below are the applicable deadlines for the submission of the REQ by subject persons:

- **Thursday 13 April 2023** – Virtual Financial Assets Agents; Virtual Financial Assets Service Providers; Real Estate Agents; Notaries; Gaming Operators
- **Thursday 20 April 2023** – Trustees and Fiduciaries; Company Service Providers; Accountants and Auditors; Tax Advisors; Advocates
- **Thursday 27 April 2023** – Credit Institutions; Financial Institutions; Investments Service and Securities Markets; Insurance and Pensions

Subject persons that operate in categories that fall on different deadlines are to follow the last applicable deadline. Late submissions of the REQ may lead to subject persons being liable to an administrative penalty. Subject persons that are not yet registered on the CASPAR portal are to do so without delay. Once duly registered, subject persons are to proceed and complete the 2023 REQ.

Subject persons are to refer to the [REQ FAQs](#) for further guidance.

4.2 Regulatory Submissions – Revised Template of the Annual Compliance Return

On 8 March 2023, the MFSA issued a [Circular](#) addressed to all company service providers in terms of the Company Service Providers Act, Chapter 529 of the Laws of Malta.

The revised template of the Annual Compliance Return has been uploaded on the MFSA's website, which template can be downloaded by clicking [here](#). Alternatively, the updated template can be found on the MFSA website under the Regulatory Submissions tab in the Company Service Providers section.

For the 2023 submission of the annual compliance return, company service providers must ensure to utilise the revised template.

CROSS-SECTORAL REGULATORY UPDATES

1.0 DIGITAL FINANCE

1.1 Digital Operational Resilience for the Financial Sector

On 4 January 2023, the MFSA issued a [Circular](#) to note that [Regulation \(EU\) 2022/2554](#) and [Amending Directive \(EU\) 2022/2556](#) were published on the EU Official Journal and entered into force on 16 January 2023. The Digital Operational Resilience Act mainly consolidates ICT risk rules to guarantee that the necessary safeguards are in place to mitigate cyber-attacks and other risks.

Regulation (EU) 2022/2554 will apply from 17 January 2025. Member States must adopt the necessary measures to comply with the Amending Directive (EU) 2022/2556 by 17 January 2025.

Regulation (EU) 2022/2554 will be supplemented by further guidelines, reports, recommendations, regulatory/implementing technical standards, and call for advice which will have different delivery deadlines as specified in Annex 1 of the [Circular](#).

1.2 Revised FinTech Regulatory Sandbox Framework

On 13 March 2023, the MFSA published the revised [MFSA FinTech Regulatory Sandbox](#) ('Sandbox').

The purpose behind the Sandbox is for financial technology ('FinTech') operators to try out their innovation for an established time within the financial services sector, subject to certain established conditions.

Amongst others, the revised Sandbox incorporates the various actions taken to re-assess every aspect of the Sandbox framework to ameliorate its efficiency. It also includes a revised Proposal Form and Application Stage.

1.3 FinTech Adoption Study within the Maltese Financial Services Sector

On 27 March 2023, the MFSA [published](#) a study on digital transformation and FinTech adoption within the Maltese financial services sector.

This study sheds light on the Maltese FinTech ecosystem by providing a detailed analysis on the adoption of FinTech, its market conditions, and consequent externalities.

The MFSA published a [presentation](#) on its website setting out the main findings of this study.

1.4 DLT Regulation – ESMA Q&A Document

On 27 March 2023, ESMA updated its [Q&A document](#) on the implementation of Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot regime for

market infrastructures based on distributed ledger technology ('DLT').

Amongst the various updates, the updated Q&A document provides clarification on who should be considered the issuer of the DLT instrument under different possible scenarios, and provides an explanation on how to populate the 'Instrument Identification Code Field' when publishing post-trade information.

The updated Q&A document even provides guidance on how the tentative market capitalisation of DLT shares referred to in article 3(1)(a) of the [DLT Regulation](#) should be calculated.

2.0 SUSTAINABLE FINANCE

2.1 ESMA's Notification Statement

On 17 January 2023, the MFSA issued a [Circular](#) addressed to Investment Firms and Credit Institutions when providing investment services activities.

The MFSA noted that ESMA is launching a common supervisory action ('CSA') with national competent authorities on the application of MiFID II disclosure rules with regards to marketing communications across the European Union.

Amongst others, ESMA's CSA will help with the collection of information about possible 'greenwashing practices' observed in marketing communications and advertisements.

In its Circular, the MFSA noted that it will be contacting the selected firms to conduct a focused inspection to assess the implementation of MiFID II disclosure rules on marketing communication.

Future updates and events

Should you be interested in receiving our Quarterly Regulatory Compliance Update in relation to regulatory developments and/or joining future events organised by Mamo TCV on regulatory & compliance matters, we invite you to subscribe to our dedicated mailing list through the following link: [subscribe here](#).

Our Regulatory Compliance Services

Having a strong compliance culture is crucial and our multidisciplinary regulatory cross-sectoral compliance team assists our clients in having the required policies and procedures to remain compliant with the local regulatory framework, as well as providing advice with respect to any changes required to their business model to better comply with the relevant requirements. Our team also delivers tailor-made training sessions to staff of regulated entities.

Key Contacts

Do not hesitate to reach out to **Michael Psaila, Katya Tua, Edmond Zammit Laferla**, or your usual contacts at Mamo TCV, should you wish to discuss the contents of this Regulatory Compliance Quarterly Update or any other financial services regulatory compliance matters.

This document does not purport to give legal, regulatory, financial or tax advice.

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