

Arendt UCITS webinar series 2025

UCITS in focus: market trends, CSSF expectations & Eligible Assets Directive review



22 September 2025

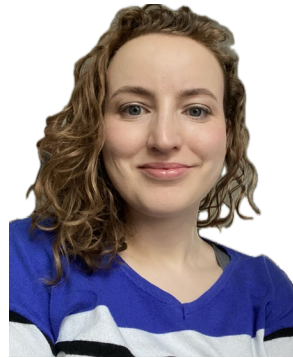
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Observations on UCITS market (1/2) *ETFs and e- Identification process*



■ Luxembourg ETFs (updated CSSF FAQ)

- **Portfolio transparency:** Actively managed UCITS ETFs must publish full portfolio holdings at least monthly (max. one-month delay) and disclose frequency/lag in the prospectus. APs and MMs receive the Portfolio Composition File via secure channels, with intraday details excluded
- **Confidentiality & compliance:** APs/MMs are bound by confidentiality agreements; IFMs and APs/MMs must have procedures to comply with Market Abuse Regulation and manage inside information
- **Market structure:** IFMs are encouraged to engage multiple APs/MMs to foster competition and ensure fair bid/offer spreads.

■ CSSF e-Identification process and first observations on the market

- Generally quicker time to market for the receipt of e-Identified prospectus
- Careful attention to changes categorisation
- **General recommendation:** Clarify categorisation with the CSSF before a filing in case of doubt

Observations on UCITS market (2/2)

GCC focus



■ GCC Focus & Opportunity

- **Growing relocation** of decision-makers and portfolio managers to the GCC
- **Increased launch** of GCC focus funds and Shariah compliant funds

■ Shariah-compliant Funds – CSSF filing best practices

- **Map the players:** Clearly identify the Shariah advisor, Shariah board/panel, portfolio manager, and all other key actors. The CSSF wants to understand how the roles interact
- **Tell the full story:** Walk the CSSF through the investment selection and purification process in detail. Even if the regulator is familiar with Shariah finance concepts, clarity upfront avoids extra questions
- **Manager without MoU:** A Saudi manager can still be appointed even though there's no MoU between the CSSF and the Saudi CMA — handled on a case-by-case basis

Recent CSSF positions *UCITS investing in CLOs*



UCITS < 50% CLOs	✓ No minimum rating requirement ✓ Sub-fund may be distributed to mass retail investors
UCITS > 50% CLOs	✓ No minimum rating requirement ✓ Distribution restrictions to exclude mass retail investors / Distribution to “sophisticated” investors only – 3 categories pre-approved by the CSSF: ✓ Min. investment EUR 100K (<i>or equivalent</i>) ✓ Min. investment EUR 10K (<i>or equivalent</i>) + knowledge and experience requirements ✓ Systematic suitability test by the distributor(s) under the control and responsibility of the Management Company (+ confirmation to be provided in the prospectus)
What else?	✓ Max. exposure to CLOs and risk warning in the prospectus ✓ UCITS > 20% in securitized assets => CSSF securitisation questionnaire

Recent CSSF positions *MMFs master- feeder structures*



Who? MMFs master feeder funds

What?

- **CSSF allowing master-feeder structures between a non-MMF and an MMF:** a fund may invest more than 85% of its assets in an MMF without being qualified as an MMF itself.
- Feeder fund not subject to MMF Regulation and related limitations on investments.

What else?

- CSSF has removed question 2A in the MMF CSSF FAQ, which previously prohibited such master/feeder structures.

ESMA Report on the review of the UCITS Eligible Assets Directive



▪ *Rationale for review of the UCITS Eligible Assets Directive*



- **Uniform implementation of eligibility rules** in light of market and regulatory developments occurring since publication of Eligible Assets Directive in 2007

▪ *European Commission's Formal Request*



- Formal Request from EC to ESMA in **June 2023**
- ESMA mandated notably (i) to analyse the **divergences** on the key definitions and concepts in the UCITS EAD and (ii) to carry out an assessment of the **risks and benefits** of UCITS gaining exposure to non-eligible asset classes, such as delta-one instruments and financial indices
- ESMA to produce technical advice and to make suggestions of Level 1 and Level 2 legislative amendments
- Call for Evidence published by ESMA on 7 May 2024 and closed on 7 August 2024

ESMA Report on the review of the UCITS Eligible Assets Directive



▪ **ESMA Report**

Published on 26 June 2025

➤ Key proposals

1. **Mandatory look-through approach**

- UCITS to apply a look-through analysis on each of its investments to determine the final underlying and its eligibility, so that at least 90% of a UCITS portfolio is invested in UCITS eligible assets
- Impact on exposure to ineligible assets (i.e. assets differing from those set out in Article 41(1) of the 2010 law) via indices, delta one notes, exchange traded notes, ETCs and shares in AIFs (open and closed-ended)
- Look-through to portfolio of AIFs very complex and impact on passive ETFs and REITs to be considered



ESMA Report on the review of the UCITS Eligible Assets Directive



2. Extension of the scope of the “trash bucket”



- Proposal to **extend the scope of the trash** ratio to allow indirect exposure to ineligible assets
- UCITS may invest via eligible assets classes (e.g. derivatives and shares in AIFs), into “alternative assets”, such as commodities, crypto-assets, and catastrophe bonds up to an aggregate of **10%**
- **Positive impact:** additional assets previously not eligible included in the trash ratio (loans, crypto-assets...)
- **Negative impact:** certain asset classes no longer considered as eligible assets and limited to the trash ratio (e.g. Cat Bonds)

3. Liquidity assessment



- Proposal to clarify that a liquidity assessment is to be performed at the asset level, not at the portfolio level
- **Negative impact:** The CSSF currently allows for the liquidity assessment to be performed at portfolio level and certain assets may become ineligible

ESMA Report on the review of the UCITS Eligible Assets Directive



4. Investments in AIFs

- Proposal to clearly distinguish open and closed-ended AIFs
- Units/shares of open-ended AIFs may not be assessed as transferable securities and shall always be subject to the eligibility criteria in article 50(1)(e)
- References to 'other collective investment undertakings' to be updated in the UCITS Directive to refer to open-ended AIFs and the language of the trash ratio should be amended to include open-ended AIFs
- Investment in closed-ended AIFs authorized if they qualify as transferable securities
- **Positive impact:** possibility to invest in non-eligible open-ended AIFs within the trash ratio



ESMA Report on the review of the UCITS Eligible Assets Directive



5. Ancillary liquid assets



- Proposal to amend the UCITS Directive to state that the 20% counterparty limit for deposits made within the same body applies also to ancillary liquid assets
- ESMA does not see merit in setting a maximum amount of ancillary liquid assets that UCITS may hold – may impact current CSSF position limiting ancillary liquid assets to 20%
- **Impact:** assessment to ensure that counterparty limits are adhered to

ESMA Report on the review of the UCITS Eligible Assets Directive



Next Steps



- ESMA Report published on **26 June 2025**
- Ongoing discussions with ALFI and EFAMA on the provisions of the Report
- EC to consider the technical advice of the Report and may propose changes to the EAD or UCITS Directive (but is not obligated)
- Possibility for European Commission to open a consultation next year
- Process for legislative changes:
 - A change to the UCITS Directive would take the form of a Level 1 amendment
 - A change to EAD would follow the Level 2 process – UCITS Directive permits ESMA and the EC to enact delegated acts under Art. 50(4) to ensure consistent harmonization of Art. 50



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