

## 24 Performance of the Ireland Apple escrow fund

- 24.1** The Ireland Apple escrow fund is a multi-billion-euro fund held under the terms of a formal agreement between the Minister for Finance (the Minister) and Apple Sales International Limited and Apple Operations International Limited (jointly referred to hereafter as Apple), pending the final outcome of legal challenges to the findings of a State aid investigation undertaken by the European Commission (the Commission).<sup>1</sup>
- 24.2** The investment and management of the fund is jointly overseen by the Minister and Apple. The Minister delegated his functions in that regard to the National Treasury Management Agency (NTMA).

### Origin of the escrow fund

- 24.3** In June 2014, the Commission opened a formal investigation procedure into the tax opinions issued by the Revenue Commissioners in 1991 and 2007 to Apple.<sup>2</sup> In August 2016, the Commission issued its decision concluding that Ireland had given illegal State aid to Apple.<sup>3</sup>
- 24.4** The Commission ordered Ireland to recover, from Apple, the alleged State aid plus interest, related to a ten-year period from 2003 up to 2014.<sup>4</sup>
- 24.5** The Revenue Commissioners computed that the alleged State aid to be collected by reference to the Commission's decision was €13.1 billion plus interest of €1.2 billion. Both the Irish Government and Apple separately appealed the Commission's decision but also agreed to the recovered amounts being held in an escrow fund pending completion of the legal process. Apple transferred €14.3 billion into the escrow account in 2018.<sup>5</sup>
- 24.6** In July 2020, the General Court of the European Union annulled the Commission's decision that Ireland had granted unlawful State aid to Apple. The Commission lodged an appeal of the General Court judgement.
- 24.7** In May 2023, the Court of Justice of the European Union (CJEU) held an oral hearing of the Commission's appeal. The next step in the process will be the publication of the Advocate General's opinion which is scheduled for 9 November 2023. The CJEU's judgement will issue subsequent to that date.

### Oversight and management of the fund

- 24.8** Placement of the recovered amounts in an escrow fund allows the escrow parties (the Minister and Apple) to determine jointly how these amounts are invested pending a final judgement by the CJEU, and the ultimate owner of the fund being determined.
- 24.9** The escrow framework deed agreed between the Minister and Apple sets out the detailed legal arrangements governing how the fund is to be managed and how any required releases from the escrow fund are to take place.<sup>6</sup> The arrangements for oversight, management and monitoring of the fund are summarised in Annex 24A.

1 In April 2023, Apple undertook an intragroup corporate reorganisation whereby Apple Operations Europe Limited (AOE) was absorbed by its Irish incorporated parent company, Apple Operations International Limited (AOI), under the relevant provisions of the Companies Act 2014. Pursuant to the merger, AOI assumed all of AOE's rights, obligations and liabilities.

2 The investigation was focused on establishing whether these opinions conferred any advantage on the Apple Ireland subsidiaries relative to competitors, such that they constituted State aid.

3 Commission Decision on State Aid SA.38373 of 30 August 2016.

4 Article 9, Chapter V of the Commission Regulation (EC) No 794/2004 of 21 April 2004. The Ireland Apple case is the largest State aid recovery ever ordered.

5 Amounts in this report have been rounded.

6 The framework deed was amended and supplemented in early March 2023 to facilitate the merger between AOE and AOI and the continuation of the agreed escrow fund arrangements following the merger. See side note 1 above.

### ***Escrow agent/custodian and investment managers***

- 24.10** At the direction of the Minister, the NTMA oversaw the procurement and appointment processes for an escrow agent/custodian and investment managers for the fund. Following competitive tender processes, an escrow agent/custodian and three investment managers were appointed in 2018 for the duration of the fund's existence, subject to early termination rights.
- 24.11** Accordingly, each of these contracts remains in place unless and until terminated in accordance with their respective terms, allowing for continuity of service provision for the period until there has been a final determination in the CJEU over the validity of the Commission's decision.

### **Investment strategy**

- 24.12** The investment principles and parameters for the escrow fund are set out in the investment policy. The objective of the investment policy is to preserve the capital value of the fund to the greatest extent possible in light of the prevailing market conditions. The agreed risk appetite in respect of the escrow fund is 'low', with investments permitted only in securities that have a low degree of inherent risk, such as highly rated fixed income securities of short to medium-term duration. The investment committee periodically reviews the ongoing appropriateness of the investment policy.<sup>1</sup> The NTMA has stated that no changes have been made to the investment policy to date.
- 24.13** The escrow fund is exposed to a variety of market, liquidity and credit risks. The risk management programme for the fund seeks to minimise the potential adverse effects of the risks on its financial performance.
- 24.14** The management and monitoring of risks is carried out by the investment managers. The escrow agent/custodian independently monitors compliance by the investment managers with their mandates and reports to the NTMA and Apple on a daily basis. The mandates issued to the investment managers are consistent with the investment policy for the fund. Compliance with the investment policy is considered by the investment committee on a quarterly basis. Regular meetings are held between the investment committee and the investment managers to review the investment managers' performance and that of the overall escrow fund.

<sup>1</sup> The investment committee which is chaired by the NTMA, comprises three NTMA representatives and three Apple representatives.

## Performance of the escrow fund

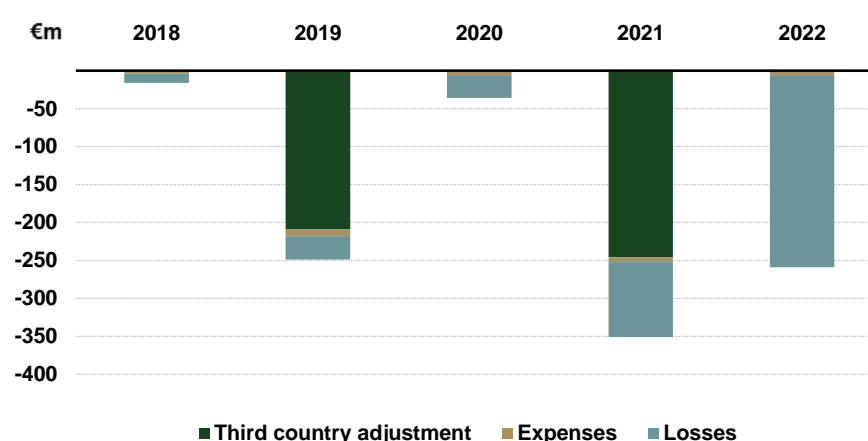
- 24.15** The financial statements of the escrow fund are prepared in accordance with International Financial Reporting Standards (IFRS), as directed by the Minister.<sup>1,2</sup> All financial assets of the escrow fund are priced at fair value, which is the quoted market value at the close of trading on the period-end date.
- 24.16** In line with the investment policy, the escrow fund is invested in highly rated euro-denominated fixed income securities, or held as cash and cash equivalents. Fixed income securities include sovereign, quasi-sovereign and corporate bonds. Cash and cash equivalents include cash and other short-term investments (with maturities of three months or less).
- 24.17** At 31 December 2022, total assets of €13,376 million were held in the escrow fund, of which around 82% was invested in financial assets and 18% held in cash and cash equivalents. This represents a significant change from the end of 2021, when the total assets were divided between 96% financial assets and 4% in cash and cash equivalents.
- 24.18** The net assets of the fund reduced in 2022 by €259 million to €13,374 million (2021: €13,633 million).<sup>3</sup> The decline in value for the year was due to the significant increase in yields across global fixed income markets, and fund operating expenses.
- 24.19** The escrow fund incurred operating costs of €6 million in 2022 (2021: €6 million) which primarily relate to investment managers' fees and escrow agent/custodian's fees.
- 24.20** Figure 24.1 shows the movement in the fund's net assets each year, from 2018 to 2022.

1 As a consequence of the Minister's delegation of the investment functions, the NTMA is required under section 12 of the National Treasury Management Agency Act 1990 (as amended) to prepare annual financial statements for audit by the Comptroller and Auditor General, to be presented (following audit) to the Houses of the Oireachtas.

2 The financial statements of the escrow fund are prepared pursuant to section 28(5) of the National Treasury Management Agency (Amendment) Act 2000.

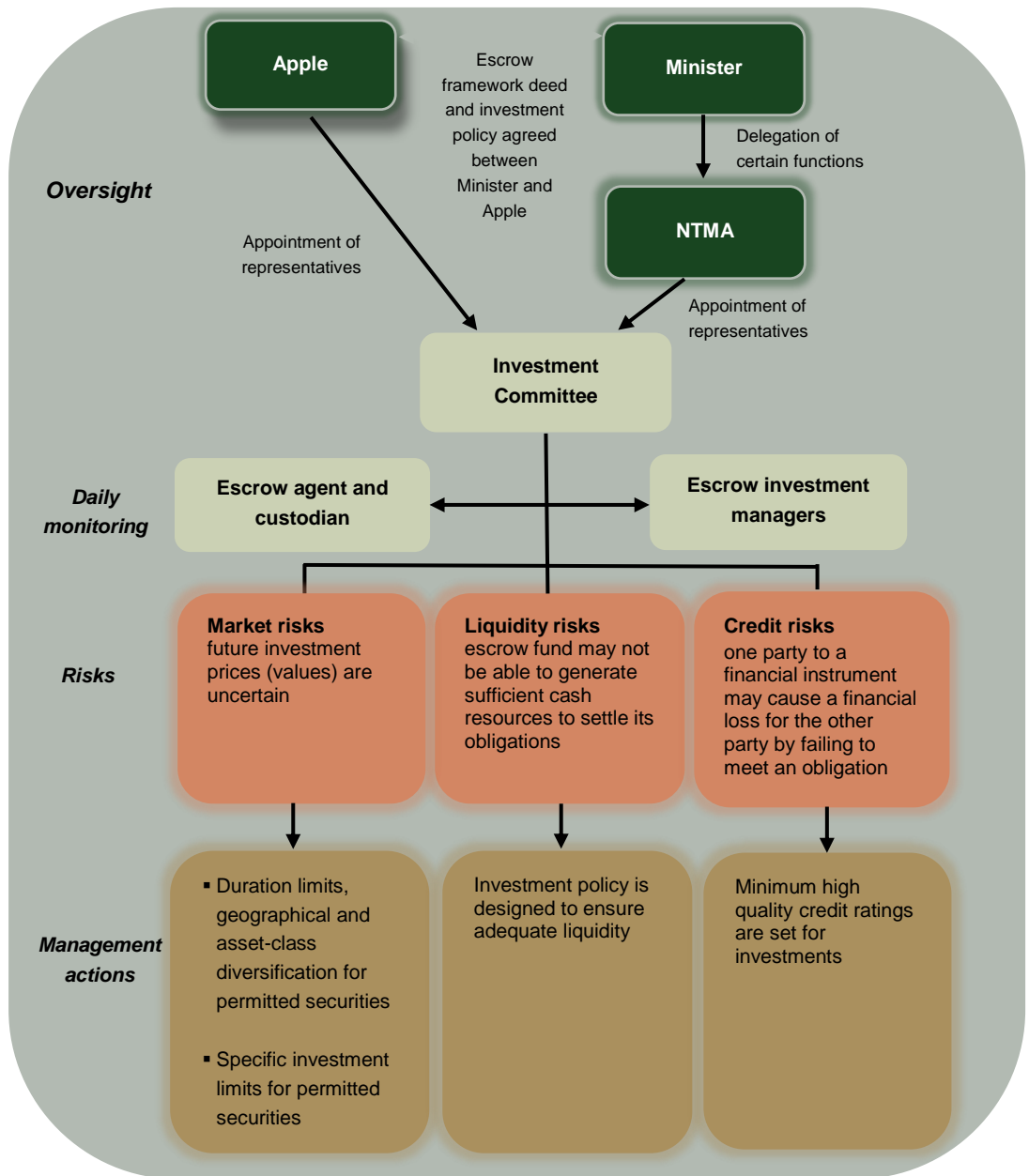
3 The difference between total assets and net assets is liabilities of the fund outstanding at the year end.

**Figure 24.1 Movement in the fund's net assets — 2018 to 2022**



Source: Financial Statements of the Ireland Apple Escrow Fund, 2018 to 2022

### Annex 24A Oversight, management and monitoring of the escrow fund<sup>a,b,c</sup>



Source: Financial Statements of the Ireland Apple Escrow Fund, 2022. Analysis by the Office of the Comptroller and Auditor General.

- Notes:
- a The role of The Bank of New York Mellon, London Branch (BNYM) as the escrow agent and custodian is to open and maintain escrow bank/securities accounts as well as to hold, apply and realise the escrow funds in accordance with the terms and conditions of the escrow agent/custodian agreement.
  - b The investment managers — Amundi Asset Management, BlackRock (Netherlands) BV and Goldman Sachs Asset Management International — are responsible for the management of investments in accordance with an investment manager mandate to preserve the fund’s capital to the greatest extent possible in light of prevailing market conditions.
  - c The escrow fund is held by BNYM, as escrow agent and custodian. The investment and management of the escrow fund is jointly overseen by the Minister and Apple Sales International Limited and Apple Operations International Limited through an investment committee. The Minister for Finance is the beneficial owner for the duration of the escrow fund in accordance with the agreed escrow framework deed.