



# Investment Firms Quarterly Legal and Regulatory Update

Period covered: 1 October 2023 – 31 December 2023

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## 1. MIFID II

### 1.1 ESMA to launch common supervisory action in 2024 on MiFID II sustainability requirements

On 3 October 2023, the European Securities and Markets Authority (**ESMA**) announced that it will launch a Common Supervisory Action (**CSA**) with National Competent Authorities (**NCA**s) in 2024 on the integration of sustainability in firms' suitability assessment and product governance processes in accordance with the Markets in Financial Instruments Directive 2014/65 (EU) (**MiFID II**).

The CSA follows the coming into effect, on 3 October 2023, of ESMA's updated Guidelines on certain aspects of the MiFID II suitability requirements (**MiFID II Suitability Guidelines**) and its Guidelines on MiFID II product governance requirements (**MiFID II POG Guidelines**).

The CSA will assess intermediaries' application of key sustainability requirements which have been in force since 2022 following the amendments to the MiFID II delegated acts<sup>1</sup>. The CSA will address matters such as how firms collect information on their clients' suitability preferences and arrangements adopted by firms to categorise investment products with sustainability factors for the suitability assessment.

ESMA's press release on the CSA can be accessed [here](#).

ESMA's updated MiFID II Suitability Guidelines can be accessed [here](#).

ESMA's updated MiFID II POG Guidelines can be accessed [here](#).

### 1.2 ESMA issues supervisory briefing on effective circuit breaker implementation

On 12 October 2023, ESMA issued a supervisory briefing on circuit breakers, which sets out ESMA's expectations for effective circuit breaker implementation by venues (**TVs**).

The supervisory briefing aims to promote convergence among NCAs on the methodology of calibration of circuit breakers and ESMA has reiterated that the use of circuit breakers by TVs is to safeguard against market volatility. TVs such as multilateral trading facilities (**MTFs**) and organised trading facilities (**OTFs**) are subject to circuit breaker requirements under Article 18(5) of MiFID II.

A copy of ESMA's supervisory briefing can be accessed [here](#).

### 1.3 ESMA updates its questions and answers document on MiFID II and MiFIR market structures topics

On 13 October 2023, ESMA updated its Questions and Answers document on MiFID II and MiFIR market structures (**Market Structures Q&A**).

The updates made to the Market Structures Q&A can be located at section six of the Market Structures Q&A, which relates to access to central counterparties (**CCPs**) and trading venues. More specifically, ESMA added two new questions and answers, including:

- Question 8 – relating to the extent a trading venue can apply different fee schedules to CCPs under Article 36 of MiFIR; and
- Question 9 – addressing whether a trading venue that has already granted access to a CCP can charge new fees that were not agreed in the access arrangement.

A copy of the updated Market Structures Q&A can be accessed [here](#).

<sup>1</sup> Commission Delegated Directive (EU) 2017/593 and Commission Delegated Regulation (EU) 2017/565

#### 1.4 Council of the EU approve final compromise texts on proposals to improve MiFID II market data access and transparency

On 18 October 2023, the Council of the European Union (**Council of the EU**) published notes from its General Secretariat to the Permanent Representatives Committee (**COREPER**) setting out final compromise texts for the legislative proposals on the Regulation on amendments to the Markets in Financial Instruments Regulation 600/2014 (**MiFIR**) and the Directive on amendments to MiFID II.

The Council of the EU also published a note (**Note**) on 18 October 2023 from the General Secretariat of the Council, confirming that COREPER endorses the final compromised texts.

The final compromise texts reflect the provisional political agreement reached between the Council **of the EU** and the European Parliament in June 2023 and include amendments to MiFIR and MiFID II which relate to improving access to market data and trade transparency. The Regulation on amendments to MiFIR and the Directive on amendments to MiFID II address removing obstacles to the emergence of consolidated tapes, prohibiting receiving payments for forwarding client orders, enhancing data transparency and optimising trading obligations.

The next step is for the final compromised texts to be formally approved by the European Parliament's Committee on Economic and Monetary Affairs (**ECON**).

A copy of the Note can be accessed [here](#).

#### 1.5 ESMA's updated Annex to transparency opinion setting out third-country trading venues under the MiFIR post-trade transparency regime

On 19 October 2023, the Annex to ESMA's published opinion to clarify whether post-trade transparency requirements in MiFIR apply also to transactions concluded on a third-country trading venue (**Transparency Opinion**) was updated.

The Annex to the Transparency Opinion sets out a list of trading venues that meet the criteria to be classified as a third-country trading venues for the purposes of the MiFIR post-trade transparency regime.

A copy of the updated Annex can be accessed [here](#).

A copy of the Transparency Opinion can be accessed [here](#).

#### 1.6 ESMA updates its questions and answers document on MiFID II and MiFIR transparency topics

On 27 October 2023, ESMA updated its Questions and Answers (**Q&As**) document on MiFID II and MiFIR transparency topics (**Transparency Topics Q&A**). The Q&As in respect of the following topics have been updated:

- General Q&As on transparency topics;
- Equity transparency;
- Non-equity transparency;
- Pre-trade transparency waivers;
- Data reporting services providers; and
- Third country issues.

Most of the updates made to the Transparency Topics Q&A relate to various Q&As being moved to ESMA's Manual of post-trade transparency under MiFID II / MiFIR, which was published on 10 July 2023.

The Transparency Topics Q&A also deleted a Q&A on the minimum size of orders held in an order management facility for non-equity financial instruments as this requirement is provided for by the amended regulatory technical standards<sup>2</sup> as regards certain transparency requirements applicable to transactions in non-equity instruments (**amended RTS 2**), which has applied since 5 June 2023.

A copy of the updated Transparency Topics Q&A can be accessed [here](#).

A copy of ESMA's Manual of post-trade transparency under MiFID II / MiFIR can be accessed [here](#).

A copy of the amended RTS 2 can be accessed [here](#).

### 1.7 Central Bank 'Dear CEO' letter: Thematic review of the annual self-assessment and validation process across firms undertaking algorithmic trading activity

On 2 November 2023, the Central Bank of Ireland (**Central Bank**) published a "Dear CEO" letter regarding its thematic review of the Annual Self-Assessment and Validation Process across Firms undertaking Algorithmic Trading Activity under MiFID II (Dear CEO Letter).

The Central Bank recently undertook a thematic review (**Thematic Review**) to assess how investment firms undertaking algorithmic trading (**Firms**) have incorporated the requirements as required by Commission Delegated Regulation (EU) 2017/589 (**RTS 6**) within their risk management and control frameworks.

The Central Bank outlines that overall, investment firms have improved on their incorporation of the requirements of RTS 6 within their risk management and control frameworks since the Central Bank conducted a similar thematic review between 2020 and 2021. However, the Central Bank outlines the action required by investment firms as a result of the findings of the Thematic Review, noting that investment firms should:

- consider the positive practices outlined in Appendix 2 to the Dear CEO Letter and adopt appropriate remedial actions to further develop governance and risk management frameworks that support algorithmic trading activity. For instance, the Central Bank welcomes the incorporation of formalised processes and controls in respect of the development, testing and monitoring of algorithms that clearly evidence second line oversight of algorithmic activity.
- ensure appropriate control and oversight arrangements are in place with regard to the annual self-assessment process and the requirements of both Article 9 and RTS 6 more broadly.
- consider existing templates for the RTS 6 Article 9 self-assessment against the findings outlined in the Dear CEO Letter and ensure that sufficient detail is being compiled to adequately assess compliance with RTS 6. The Central Bank outlines that the self-assessment process should be comprehensively documented, supported through formalised processes and arrangements and embedded within the risk management framework.
- assess the current training and development programmes to ensure that there is adequate training provided to ensure continuous professional development, especially for existing staff.

The Central Bank calls for the CEOs of Firms to ensure that the Dear CEO Letter is discussed, minuted and actioned through the performance of a gap analysis by their Boards before 31 March 2024. The Central Bank has warned that it may have regard to the content and quality of such gap analysis and remediation plans in future reviews of an investment firm's compliance.

A copy of the Dear CEO Letter can be accessed [here](#).

<sup>2</sup> Commission Delegated Regulation (EU) 2023/945 of 17 January 2023 amending the regulatory technical standards laid down in Delegated Regulation (EU) 2017/583

## 1.8 European Commission targeted consultation on OTC derivatives identifier for public transparency purposes

On 29 November 2023, the European Commission launched a consultation on the replacement of the public identifier of over-the-counter (OTC) derivatives in the EU. The consultation is targeted at participants in the in-scope OTC derivatives value-chain.

This consultation was open until 9 January 2024.

The consultation can be accessed [here](#).

## 1.9 Central Bank 'Dear CEO' Letter: Common supervisory action on MiFID II costs and charges requirements

On 1 December 2023, the Central Bank issued a 'Dear CEO' letter to include its findings from its MiFID costs and charges review (Thematic Review).

The Central Bank conducted the Thematic Review as part of the Common Supervisory Action (CSA) undertaken in 2022 by ESMA and the NCAs in respect of MiFID II costs and charges requirements. The Thematic Review involved a desk-based review alongside inspections of firms to examine firms' application of the relevant costs and charges disclosure requirements under MiFID II.

The 'Dear CEO' letter sets out three principal findings relating to costs and charges disclosure requirements including:

- Aggregated costs;
- Itemised breakdowns; and
- Third parties and third party payments.

The 'Dear CEO' letter details each finding along with good practices observed and the Central Bank's expectations of firms in respect of their costs and charges disclosures. Following the findings of the Thematic Review, the Central Bank has requested firms to carry out a documented review of their costs and charges practices, which is to be approved by firm Boards by 31 March 2024.

For further details on the 'Dear CEO' letter, please refer to the Dillon Eustace briefing on this topic which can be accessed [here](#).

A copy of the 'Dear CEO' letter can be accessed [here](#).

## 1.10 ESMA publishes discussion paper on MiFID II investor protection topics linked to digitalisation

On 14 December 2023, ESMA published a Discussion Paper on investor protection topics linked to digitalisation under MiFID II (Discussion Paper).

The Discussion Paper is addressed to NCAs, firms subject to MiFID and their clients, investment firms and credit institutions providing investment services and activities, UCITS management companies and external alternative investment fund managers (AIFMs) when providing investment services, investor and consumer organisations, and to any relevant trade associations.

The Discussion Paper discusses how technology impacts retail investor behaviour and decision-making and assesses the opportunities and potential risks linked to digitalisation.

The Discussion Paper provides suggestions and draft recommendations in respect of key investor protection topics, such as:

- layering, accessibility and readability of information;
- marketing communications and practices;
- gamification;

- digital engagement practices and choice architecture;
- the use of affiliates;
- social features of investment apps;
- choice architecture and nudging techniques;
- push notifications; and
- dark patterns.

ESMA is welcoming comments on the Discussion Paper until 14 March 2024 which can be submitted [here](#).

Responses to the Discussion Paper will assist ESMA in determining whether a regulatory response to the issues raised in the Discussion Paper is necessary.

A copy of the Discussion Paper can be accessed [here](#).

A copy of ESMA's related press release can be accessed [here](#).

### 1.11 ESMA updates Q&As document on investor protection and intermediaries under MiFID II and MiFIR

On 15 December 2023, ESMA published an updated Q&A document on investor protection and intermediaries under MiFID II and MiFIR.

The following updates have been made to section 9 (Information on costs and charges) of the Q&A document:

- Question 13 has been updated to provide guidance in respect of costs and charges disclosures relating to all-in fees; and
- A new question 35 has been added which discusses how investment firms should indicate the parts of the total costs and charges paid in or represented in an amount of foreign currency in their ex-ante and ex-post costs and charges disclosure.

A copy of the updated version of the Q&A document can be accessed [here](#).

## 2. INVESTMENT FIRMS REGULATION AND INVESTMENT FIRMS DIRECTIVE

### 2.1 EBA publishes final guidelines on benchmarking of diversity practices

On 18 December 2023, the European Banking Authority (EBA) published the final report on guidelines on benchmarking of diversity practices (**Final Report**).

The Final Report outlines the information that competent authorities are required to collect from credit institutions and investment firms regarding diversity practices such as composition of the management body, the gender pay gap at management body level, and diversity policies.

The guidelines in the Final Report will apply from three months after the publication of the guidelines on the EBA's website in all official EU languages. The new reporting format provided in the Final Report will apply for the collection of data in 2025 for the reporting date 31 December 2024.

As a result of the updated reporting by competent authorities on diversity practices, the EBA will analyse the diversity practices of a representative sample of institutions and investment firms to publish an EU benchmarking report every three years. The EBA Board of Supervisors has adopted and published a decision (**Decision**) on the criteria for competent authorities to rely on when determining the composition of the sample of reporting firms.

A copy of the Final Report can be accessed [here](#).

A copy of the EBA's Decision can be accessed [here](#).

### 3. EMIR & SFTR

#### 3.1 Extension of temporary measures for central clearing counterparty collateral requirements

On 13 October 2023, the European Supervisory Authorities (**ESAs**) published its final report on the extension of temporary emergency measures on central counterparty (**CCP**) collateral requirements. The final report contains draft regulatory technical standards (**RTS**) which proposes to extend the emergency measures which temporarily expand the pool of eligible collateral that CCPs can accept for a further period of six months until 29 May 2024. The measures temporarily expand the pool of eligible collateral to include uncollateralised bank guarantees for Non-Financial Counterparties (**NFCs**) acting as clearing members and public guarantees for all types of counterparties (subject to certain conditions) for a further six months.

The ESAs final report can be accessed [here](#).

#### 3.2 The Central Bank issues administrative sanctions against an ICAV for breach of EMIR reporting obligations

On 28 November 2023, the Central Bank reprimanded and fined the Irish-authorized investment fund, GlobalReach Multi-Strategy ICAV (**ICAV**), €192,500 for breach of its reporting obligation under Regulation (EU) 648/2012 (**European Market Infrastructure Regulation** or **EMIR**).

In its press release announcing the enforcement action, the Central Bank reiterated the importance of timely and accurate data reporting and the need to ensure that firms must “*have appropriate oversight of data reporting from Board level down, including where data reporting is delegated or outsourced. The delegation of reporting obligations must be appropriately managed in order to avoid confusion between the delegates as to their respective reporting responsibilities*”.

A copy of the Central Bank press release can be accessed [here](#).

The “Dear CEO” letter is available [here](#).

#### 3.3 EMIR 3.0

On 1 December 2023 the European Council published its mandate for negotiations with the European Parliament in respect of the package of proposals published by European Commission on 7 December 2022. The proposals seek to develop the EU's Capital Markets Union (**CMU**), including a proposal to amend the EMIR seeking to make derivatives clearing in the EU more attractive. This [proposal](#) is commonly referred to EMIR 3.0.

The proposal includes measures to improve the attractiveness of EU CCPs. It seeks to simplify the procedures for CCPs launching products and changing models as well as introducing a non-objection procedure for certain changes. The proposal also includes measures to reduce the excessive reliance of EU market participants on non-EU CCPs as well as other miscellaneous measures such as amendments to intragroup transactions, changes to reporting obligations and risk mitigation measures, changes to clearing thresholds and proposals in relation to NFCs. It also seeks to amend rules governing CCPs participation and collateral requirements, such as proposing that CCPs should not, to the best of their ability, hold intraday variation margin calls and extending the classes of eligible margin to include bank guarantees and public guarantees in certain circumstances.

In addition, a separate proposed [Directive](#) seeks to amend the UCITS Directive<sup>3</sup>, Investment Firms Directive (**IFD**)<sup>4</sup> and Capital Requirements Directive (**CRD**)<sup>5</sup>. The proposed Directive seeks to eliminate counterparty risk limits for all OTC derivative transactions from counterparty risk limits under Article 52 of the UCITS Directive. This measure aims to establish a level playing-field between exchange traded and OTC derivatives and to better reflect the risk reducing nature of CCPs in derivative transactions. In both instances such an exclusion will only apply where the derivative transaction is centrally cleared by a CCP that is authorised or recognised under EMIR.

The proposal also includes a proposed [Regulation](#) including amendments to the Money Market Funds Regulation (**MMF**)<sup>6</sup> to also exclude centrally cleared derivative transactions from counterparty risk limits.

Please see our earlier briefing paper on the key aspects of EMIR 3.0 which is available [here](#).

The package of CMU proposal is available [here](#).

### 3.4 Margin exemption for single-stock equity options and index options

On 20 December 2023, ESMA, the ESAs published joint draft regulatory technical standards (**Draft RTS**) amending existing RTS in Commission Delegated Regulation (EU) 2016/2251 which supplement EMIR. The Draft RTS propose a two-year extension to the temporary exemption currently afforded to non-centrally cleared OTC single-stock equity options and index options (**Equity Options**) from the bilateral margining requirements. The exemption was set to expire on 4 January, 2024 but will now be available until 4 January 2026.

The ESAs have also published a “no action” opinion (**No Action Opinion**) to accompany the Draft RTS, given the practical timeline difficulty for the Draft RTS to be considered by the European legislators before 4 January 2024. The No Action Opinion provides that NCAs should not prioritise any supervisory or enforcement action against counterparties for failures to comply with the risk mitigation requirements under EMIR in respect to Equity Options.

A copy of the Draft RTS can be accessed [here](#).

A copy of the No Action Opinion can be accessed [here](#).

### 3.5 EMIR Refit reporting regime

The new EMIR Refit reporting regime comes into effect on 29 April 2024.

We refer to our earlier DE briefing paper which is available [here](#).

The new EMIR Refit reporting regime introduces:

- greater alignment of data standards, formats, methods, and arrangements for reporting including the use of ISO 20022 XML methodology;
- increase in data fields;
- a requirement for the reporting of outstanding derivatives to be updated by 26 October 2024;
- a new requirement for an entity that is responsible for reporting under EMIR to notify its NCA (and, if different, the NCA of the reporting counterparty) of certain types of significant errors or omissions in its reporting, as soon as it becomes aware of them.

<sup>3</sup> Directive 2009/65/EU

<sup>4</sup> Directive (EU) 2019/2034

<sup>5</sup> Directive 2013/36/EU

<sup>6</sup> Regulation (EU) 2017/1131

The EMIR Refit reporting regime has been established by the following;

- **New RTS:** Commission Delegated Regulation (EU) 2022/1855 of 10 June 2022 (**RTS**) and Commission Delegated Regulation (EU) 2022/1860 of 10 June 2022 (**ITS**) which are available [here](#) and [here](#).
- **New validation rules;** New validation rules effective 29 March 2023 which are available [here](#).
- **New Guidelines:** ESMA final report on Guidelines for reporting under EMIR applicable from 29 April 2024 which are available [here](#).

## 4. CENTRAL BANK OF IRELAND

### 4.1 Central Bank industry communication on conduct risk assessment of telephone and electronic communications

On 4 October 2023, the Central Bank published an industry communication (**Industry Communication**) entitled “Conduct Risk Assessment of Telephone and Electronic Communications”.

The Industry Communication provides the Central Bank’s feedback on its conduct risk assessment (**Assessment**) of investment firms and credit institutions (**firms**) engaged in securities markets activity. The Assessment was concerned with the frameworks implemented by firms to ensure that the use, recording and monitoring of firm authorised telephone and electronic communications are compliant with the requirements of MiFID II.

In its Industry Communication, the Central Bank has expressed its concern with the risks associated with the unauthorised use of telephone and electronic communication devices, such as the risk of market abuse.

The Industry Communication details the key findings identified during the Assessment, which include the following findings:

- The standard of monitoring and testing carried out by firms failed to meet the Central Bank’s expectations, despite all firms having the necessary IT infrastructure in place to ensure record keeping and recording of electronic communications;
- Only a small number of breaches of policies and procedures were identified by firms, thereby indicating a weakness in firms’ monitoring functionalities;
- In the majority of cases when breaches were identified by firms, firms’ own disciplinary procedures were not followed and some firms did not have a distinct policy or procedure in place regarding the escalation of breaches; and
- Many firms provide corporate devices to their employees as a measure to reduce the risk of communications occurring through unauthorised or unapproved channels.

The Central Bank provide further detail on the key findings of their Assessment in the appendix to the Industry Communication and outline the Central Bank’s expectations in respect of firms’ frameworks for telephone and electronic communications.

The Central Bank advise that the Industry Communication should be brought to the attention of all Board members, Senior Management and relevant staff as soon as possible and before the end of Q4 2023. The Central Bank expects all firms to drive continuous improvement in their frameworks for telephone and electronic communications to support effective identification, monitoring, reporting and mitigation of wholesale market conduct risks.

A copy of the Industry Communication can be accessed [here](#).

### 4.2 Central Bank publishes Consultation Paper 156 on its approach to innovation engagement in financial services

On 8 November 2023, the Central Bank published consultation paper 156 on its approach to innovation engagement in financial services.

In it, the Central Bank outlines how it engages today on innovation, the enhancements it plans to make to deepen its current model of engagement and its proposals to introduce an Innovation Sandbox.

The consultation closes on 8 February 2024.

A copy of the consultation paper is available [here](#).

#### 4.3 Notice of Intention on recognition of sustainability knowledge and competence in the MCC

On 23 November 2023, the Central Bank published a Notice of Intention on the Recognition of sustainability knowledge and competence in the Minimum Competency Code 2017 (**Notice of Intention**).

The Notice of Intention provides that the Central Bank will update Appendix 3 of the Minimum Competency Code (**MCC**) which sets out the minimum competencies for retail financial products and will recognise sustainability training for Continuing Professional Development (**CPD**) hours where such training is directly relevant to a person's role.

Appendix 3 of the MCC will be updated to include competencies concerned with sustainability for retail financial products and incorporate the suitability requirements as set out in MiFID II and the Insurance Distribution Directive (**IDD**).

The Central Bank will publish an Addendum to the MCC to reflect the changes addressed in the Notice of Intention, and such changes will be effective from 1 January 2025.

A copy of the Notice of Intention can be accessed [here](#).

## 5. ANTI-MONEY LAUNDERING (AML) AND COUNTERING THE FINANCING OF TERRORISM (CFT)

### 5.1 Central Bank's updated guidance on beneficial ownership register of certain financial vehicles

On 20 October 2023, the Central Bank published an updated guidance document (**2023 BOR Guidance**) on the Beneficial Ownership Register of Certain Financial Vehicles (**the Register**).

The updates made within the 2023 BOR Guidance include:

- the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) (Amendment) Regulations 2023 (S.I. No 308 of 2023) which amends the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 to provide that access requests by members of the public to the Register must meet a threshold of legitimate interest; and
- The replacement of the Central Bank's Online Reporting (**ONR**) System with the Central Bank Portal (**the Portal**).

A copy of the 2023 BOR Guidance can be accessed [here](#).

### 5.2 FATF Public Consultation: Draft risk-based guidance on beneficial ownership and transparency of legal arrangements

On 31 October 2023, the Financial Action Task Force (**FATF**) launched a public consultation on draft risk-based guidance (**Draft Guidance**) on FATF recommendation 25 on beneficial ownership and transparency of legal arrangements. The Draft Guidance is intended to assist countries in implementing the revisions to FATF recommendation 25 that were agreed in February 2023.

The public consultation closed on 8 December 2023 and the FATF will consider the responses at its plenary to be held in February 2024.

### 5.3 Updating of EU list of high risk countries to remove Cayman Islands and Jordan

The FATF plenary meeting in October 2023 concluded that Albania, the Cayman Islands, Jordan and Panama will no longer be subject to the FATF's increased monitoring process.

On 12 December 2023, the European Commission adopted a delegated regulation (**Delegated Regulation**) removing Cayman Islands and Jordan from the list of high-risk third countries with strategic AML and counter-terrorist financing (CTF) deficiencies (**High-Risk Third Country List**) which is contained at the Annex to Commission Delegated Regulation (EU) 2016/1675.

The Delegated Regulation will be submitted to the Council of the EU and the European Parliament for scrutiny and if neither institution objects, the Delegated Regulation will be effective 20 days following its publication in the Official Journal of the European Union (**OJ**).

Despite the FATF's removal of Albania and Panama from its list of jurisdictions under increased monitoring, the European Commission has not removed Albania or Panama from its High-Risk Third Country List.

A copy of the FATF publication from its October plenary meeting can be accessed [here](#).

A copy of the Delegated Regulation can be accessed [here](#).

### 5.4 EBA guidelines on policies and controls for the effective management of ML/TF risk factors

From 3 November 2023, the EBA's guidelines on policies and controls for the effective management of money laundering and terrorist financing (**ML/TF**) risks when providing access to financial services (**Guidelines**) are effective. The Guidelines were published by the EBA on 31 March 2023.

The Guidelines address the steps institutions should take to facilitate access to financial services by those categories of customers which are particularly vulnerable to unwarranted "de-risking". The concept of "de-risking" refers to decisions made by credit and financial institutions to refuse to enter into, or to terminate, business relationships with individual customers or categories of customers associated with higher ML/TF risk.

The Guidelines:

- outline the steps that institutions should take when considering whether to refuse or terminate a business relationship with a customer based on AML/CFT compliance grounds;
- require that decisions to refuse a business relationship or to apply risk-mitigating measures must be proportionate and aligned with the principle of non-discrimination; and
- address the complaint mechanisms that institutions should adopt to ensure customers can make a complaint if they believe they have been treated unfairly.

A copy of the Guidelines can be accessed [here](#).

### 5.5 EU list of prominent public functions

On 10 November 2023, the European Union published a list (**List**) of prominent public functions at national level, at the level of international organisations and at the level of the European Union institutions and bodies in the OJ.

The List outlines the prominent public functions at EU member state level, at the level of international organisations and at the level of EU institutions and bodies. The List therefore provides clarity on classifications of politically exposed persons or PEPs within EU member states for the purposes of the Fourth Anti-Money Laundering Directive<sup>7</sup>.

A copy of the List can be accessed [here](#).

## 5.6 Provisional agreement reached on proposed Anti Money Laundering Authority Regulation

On 13 December 2023, the Council of the EU published a press release to announce that a provisional political agreement (**Provisional Agreement**) has been reached between the Council of the EU and the European Parliament on the proposed Regulation (**AMLA Regulation**) establishing the Anti-Money Laundering Authority (**AMLA**).

The AMLA Regulation was published by the European Commission in 2021 as part of its AML reform package (**AML Reform Package**) and the interinstitutional negotiations between the Council of the EU, the European Parliament and the European Commission on the AML Reform Package have been ongoing since May 2023. In its press release, the Council of the EU note that the establishment of AMLA, as a European regulatory authority for countering money laundering and financing of terrorism, is the “centrepiece” of the AML Reform Package. The Provisional Agreement reached on the AMLA Regulation is therefore a welcomed development in the progression of the AML Reform Package.

The Provisional Agreement does not include a conclusion regarding the location of AMLA, the selection process for which is continuing to be negotiated between the Council of the EU and the European Parliament.

Negotiations between the Council of the EU and the European Parliament are also ongoing in respect of the wider AML Reform Package such as the proposed Regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (**AML Regulation**) (2021/0239(COD)) (**also known as the EU AML/CFT single rulebook**) and the proposed Sixth Anti-Money Laundering Directive (**MLD6**) (2021/0250(COD)). However, in the European Parliament’s press release concerning the Provisional Agreement, it outlines that provisional agreement has been reached on certain horizontal aspects of the broader AML Reform Package on matters such as whistleblowing reporting channels, cooperation between the FIUs and AMLA, and the circumvention of targeted financial sanctions.

The text of the Provisional Agreement still needs to be finalised and confirmed by the Committee of Permanent Representatives (**COREPER**). The text of the Provisional Agreement and the legal texts of the remaining elements of the AML Reform Package are expected to be prepared for formal adoption by the Council of the EU and the European Parliament in early 2024.

AMLA is expected to be operational in 2024 and its establishment will likely result in increased AML and CFT supervision, not only for Selected Entities, but for all firms as national supervisory authorities will be under increased scrutiny by AMLA and AMLA’s implementing or regulatory technical standards will be binding on all obliged entities, not just those directly supervised entities.

A copy of the Council of the EU’s press release can be accessed [here](#).

A copy of the European Parliament’s press release can be accessed [here](#).

For more information on the broader AML Reform Package proposed by the European Commission in 2021, please refer to our previous client briefing [here](#).

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<sup>7</sup> Directive (EU) 2015/849

## 5.7 EBA updates to the single rulebook Q&A on AMLD4

On 22 December 2023, the EBA updated its Single Rulebook Questions and Answers (**Q&A**) publication on the Fourth Anti-Money Laundering Directive<sup>8</sup> (the **AMLD4 Single Rulebook Q&A**).

The Q&As in respect of the following matters have been updated:

- Identifying the customer of a Payment Initiation Service Provider (**PISP**) (Article 3 (13) of AMLD4); and
- Identifying the customer of a collecting Payment Service Provider (**PSP**) (Article 3 (13) of AMLD4).

The updated AMLD4 Single Rulebook Q&A can be accessed [here](#).

## 6. PRIIPs

### 6.1 ESAs publishes updated PRIIPS KID Q&A.

In a revised edition of their PRIIPS KID Q&A published in December 2023, the ESAs have added new Q&As to the following sections:

- General topics;
- Market Risk Assessment (Product Categories);
- Performance Scenarios;
- Multi-Options Products; and
- Investment Funds.

A copy of the revised ESA PRIIPS KID Q&A is available [here](#).

## 7. CENTRAL BANK INDIVIDUAL ACCOUNTABILITY FRAMEWORK AND FITNESS & PROBITY REGIME

### 7.1 Central Bank publishes finalised implementing regulations and guidance on its Individual Accountability Framework

On 16 November 2023, the Central Bank published:

- Finalised guidance on its Individual Accountability Framework (**IAF**);
- Finalised draft regulations which are required to implement (i) the changes to its Fitness & Probity (**F&P regime**) certification regime;
- The senior executive accountability regulation (**SEAR**) and the extension of the F&P regime to in-scope holding companies<sup>9</sup>; and
- Feedback statement on Consultation Paper 153 which issued in March 2023 and which provided industry stakeholders with the opportunity to provide feedback on the Central Bank's proposed approach to implementing IAF.

The Central Bank confirmed that the individual conduct standards will apply in full to all individuals performing PCF and CF roles in Irish regulated firms from 29 December 2023.

The Central Bank confirmed that for those firms falling within the scope of SEAR, independent non-executive directors (**INEDs**) and non-executive directors (**NEDs**) will not be required to comply with SEAR until 1 July 2025 (**a one-year delay**).

<sup>8</sup> Directive 2015/849/EU

<sup>9</sup> These comprise holding companies established in the State of credit institutions, insurance undertakings and investment firms.

The Central Bank also confirmed that the extension of the F&P regime to in-scope holding companies includes the introduction of two new PCF roles namely HCPCF1 being the office of the chair of the holding company and HCPCF2 being the office of director of the holding company. The relevant regulations also create two CF roles, namely HCCF1 (being those persons who can exercise a significant influence on the conduct of the affairs of the holding company) and HCCF2 (being those persons who are involved in ensuring, controlling or monitoring compliance by a holding company with its relevant obligations).

- A more detailed overview of the finalised IAF regime is contained in provided in our briefing on the topic which is available [here](#).
- A copy of the finalised regulations introducing the new certification regime under the Central Bank's fitness and probity regime is available [here](#).
- A copy of the finalised regulations which extend the F&P regime to certain Irish holding companies is available [here](#).
- Further information on the PCF and CF roles within in-scope holding companies is available [here](#).
- A copy of the draft finalised regulations giving full effect to the SEAR regime (awaiting publication on the Irish Statute Book) is available [here](#).
- A copy of the Central Bank's finalised guidance on the IAF framework is available [here](#).
- A copy of the Central Bank's feedback statement on its Consultation Paper 153 is available [here](#).

## 7.2 Central Bank publishes finalised administrative sanctions procedures guidelines

On 13 December 2023, the Central Bank published its finalised guidelines relating to its enhanced administrative sanctions procedure (**Finalised ASP Guidelines**) which has been introduced to give further effect to its Individual Accountability Framework under the Central Bank (Individual Accountability Framework) Act 2023 (**Act**). Under changes introduced by the Act, the Central Bank can now take direct enforcement against individuals performing PCF and CF roles in an Irish regulated financial services firm.

It also published its feedback statement to its Consultation Paper 154 in which it provides its response to feedback received from relevant stakeholders on its consultation on draft administrative sanctions procedure guidelines.

The Finalised ASP Guidelines came into force on 13 December 2023 and are available [here](#).

The Central Bank's feedback statement to Consultation Paper 154 is available [here](#).

A Dillon Eustace briefing providing an overview of the Finalised ASP Guidelines is available [here](#).

## 7.3 Central Bank publishes revised edition of Fitness & Probity Standards and related guidance and extends the list of PCF roles

### (A) Central Bank Fitness & Probity Standards

In December 2023, the Central Bank published a revised version of its fitness and probity standards which are issued under Section 50 of the Central Bank Reform Act 2010, replacing the previous standards which had been in place since 2014 (**Revised F&P Standards**).

The Revised F&P Standards amend the previous standards to take account of the fact that the F&P regime now applies to certain Irish holding companies. The Central Bank has also made certain changes to Section 4 of the standards which relates to the obligation to act honestly, ethically and with integrity.

A copy of the Revised F&P Standards is available [here](#).

### (B) Central Bank Guidance on Fitness and Probity Standards

The Central Bank has also updated its June 2018 guidance on the F&P regime to take account of the Revised F&P Standards which was most recently updated in June 2018 (**Revised F&P Guidance**)

The Revised F&P Guidance has been updated to address the changes introduced to the F&P regime as part of the introduction of the Central Bank's Individual Accountability Framework (**IAF**) as well as clarifying the due diligence obligations imposed on regulated financial service providers in determining that an individual is fit and proper to perform the relevant role and addressing the extension of the F&P regime to in-scope holding companies.

A copy of the Revised F&P Guidance is available [here](#).

### **(C) Extension of list of those performing PCF roles within Irish regulated financial services firms**

On 20 December 2023, the Central Bank Reform Act 2010 (Sections 20 and 22) (Amendment) Regulations 2023 (**Regulations**) were published, coming into operation on 29 December 2023.

The Regulations introduce three new pre-approved controlled functions, namely:

- i) PCF-54 Head of Material Business Lines for Insurance Undertakings;
- ii) PCF-55 Head of Material Business Lines for Investment Firms; and
- iii) PCF-53 Head of Client Asset Oversight (applicable to Irish credit institutions only).

Both the PCF-54 and PCF-55 roles are allocated to individuals (in insurance undertakings and in investment firms, respectively) exercising significant influence over the performance of a material business line and the Amended PCF List provides qualitative criteria in this regard.

The Regulations also amend PCF-16 Branch Manager of branches established outside of the State in order to introduce a material threshold whereby the role only applies where the business arising from the branch amounts to 5% or more of, as applicable, the assets or revenues or gross written premium of the regulated financial service provider.

A copy of the Regulations is available [here](#).

Further information on the scope of the newly created PCF roles is available [here](#).

## **8. SUSTAINABILITY**

### **8.1 European Commission publishes additional guidance on disclosure obligations arising under Article 8 of the Taxonomy Regulation.**

Under Article 8 of the Taxonomy Regulation, in-scope companies are required to report information on the Taxonomy-eligible and Taxonomy-aligned economic activities and assets in their annual financial statements in accordance with the specific requirements of Commission Delegated Regulation (EU) 2021/2178 (**Disclosures Delegated Act**).

On 20 October 2023, a Commission Notice which provides guidance to non-financial undertakings falling within the scope of Article 8 of the Taxonomy Regulation on the reporting of key performance indicators under the Disclosures Delegated Act was published in the OJ (**Commission Notice for Non-Financial Undertakings**).

On 21 December 2023, the European Commission published a draft Commission notice on the interpretation and implementation of certain provisions of delegated acts published under Article 8 of the Taxonomy Regulation (**Draft Commission Notice for Financial Undertakings**). The purpose of the Draft Commission Notice for Financial Undertakings is to provide specific interpretative and

implementation guidance to financial undertakings falling within the scope of Article 8 of the Taxonomy Regulation on the reporting of their key performance indicators under the Disclosures Delegated Act.

A copy of the Commission Notice for Non-Financial Undertakings is available [here](#).

A copy of the Draft Commission Notice for Financial Undertakings is available [here](#).

## 8.2 Publication of taxonomy delegated acts in the Official Journal of the European Union and publication of related European Commission guidance

On 21 November 2023, Commission Delegated Regulation (EU) 2023/2486 (**EU Taxonomy Environmental Delegated Act**) and Commission Delegated Regulation (EU) 2023/2485 (**Amending EU Taxonomy Climate Delegated Act**) were published in the OJ.

The EU Taxonomy Environmental Delegated Act enters into force on 1 January 2024. This regulation sets down the technical screening criteria which must be satisfied in order for an economic activity to be deemed as contributing to the Taxonomy-related environmental objectives of (i) the sustainable use and protection of water and marine resources, (ii) the transition to a circular economy, (iii) to pollution prevention and control and (iv) the protection and restoration of biodiversity and ecosystems.

On the same date, certain provisions of the Amending EU Taxonomy Climate Delegated Act also enter into force. This regulation makes targeted amendments to the existing EU Taxonomy Climate Delegated Acts to expand on the economic activities contributing to climate change mitigation and climate change adaptation not yet covered by the EU Taxonomy framework, in particular the manufacturing and transport sectors.

Separately on 20 October 2023, a Commission Notice containing technical clarifications on the technical screening criteria set out in the existing EU Taxonomy Climate Delegated Act was published in the OJ (**Commission Notice**).

A copy of the EU Taxonomy Environmental Delegated Act is available [here](#).

A copy of the Amending EU Taxonomy Climate Delegated Act is available [here](#).

A copy of the Commission Notice is available [here](#).

## 8.3 ESMA publishes explanatory notes covering key aspects of the EU sustainable finance framework

On 22 November 2023, ESMA published three explanatory notes covering key aspects of the EU sustainable finance framework as follows:

- Definition of “sustainable investments” and “environmentally sustainable activities”

This explanatory note provides a comparative overview of the concepts of “sustainable investment” under the SFDR and Taxonomy environmentally sustainable activities (i.e. Taxonomy-aligned activities).

- “Do No Significant Harm” definitions and criteria across the EU Sustainable Finance framework

This explanatory note is intended to explain the concept of “do no significant harm” (or “DNSH”) as it appears in the SFDR, the Taxonomy Regulation and the Benchmark Regulation.

- Concept of estimates across the EU Sustainable Finance framework

This explanatory note is intended to explain how each of the SFDR, the Taxonomy Regulation and the Benchmark Regulation deal with the use of “estimates” and “equivalent information” and the conditions under which these are allowed as sources of data to prepare mandatory ESG metrics for the compliance of regulated entities with their obligations under the relevant frameworks.

ESMA notes in each of the explanatory notes that they are intended to assist stakeholders in navigating these concepts and a “purely factual presentation of the relevant legal provisions” in applicable legislation and the guidance issued by the European Commission and the ESAs to date.

A copy of the explanatory note relating to the concepts of “sustainable investment” and “environmentally sustainable activities” is available [here](#).

A copy of the explanatory note relating to the concept of “Do No Significant Harm” is available [here](#).

A copy of the explanatory note relating to concepts of estimates across the EU Sustainable Finance framework is available [here](#).

#### 8.4 ESAs propose amendments to SFDR level 2 measures

On 4 December 2023, the ESAs published their final report containing proposed targeted amendments to Commission Delegated Regulation (EU) 2022/1288 which underpins the SFDR (**SFDR Level 2 Measures**). This followed a consultation process which had been carried out by the ESAs earlier in 2023.

The amendments proposed by the ESAs to the SFDR Level 2 Measures include the following;

- New financial product disclosure of greenhouse gas emission reduction targets;
- An extension of the social PAI indicators and other changes to the PAI disclosures framework;
- Enhanced disclosure of how sustainable investments comply with the “do not significantly harm” (“**DNSH**”) principle;
- Revision of the provisions for products with investment options such as multi-option products (**MOPs**); and
- Other technical changes including harmonised calculation of sustainable investments and a requirement to produce the disclosures in machine-readable format.

In order for the ESA’s proposed amendments to the SFDR Level 2 Measures to become law, they must now be considered by the European Commission who must decide whether or not to endorse such proposed changes within three months.

A copy of the ESA report containing their proposed amendments to the SFDR Level 2 Measures is available [here](#).

#### 8.5 European Parliament and Council of Europe begin consideration of proposed regulatory framework for ESG rating providers

In June 2023, the European Commission adopted a legislative proposal setting down a proposed new regulatory framework governing the activities of ESG rating providers operating in the European Union (**ESG Rating Providers Proposal**).

The ESG Rating Providers Proposal is intended to improve the quality of ESG ratings by: (i) improving the transparency of ESG ratings, their methodologies and their data sources by imposing specific transparency obligations on ESG rating providers and (ii) ensuring increased integrity of operations of ESG rating providers and the prevention of risks of conflicts of interest at ESG rating providers’ level.

The European Commission has proposed that all ESG rating providers which publicly disclose or distribute ESG ratings to regulated financial undertakings in the EU should be authorised and supervised by ESMA.

The ESG Rating Providers Proposal is currently being considered by both the European Parliament and the Council of the EU.

On 8 December 2023, the European Parliament published a report adopted by its Economic and Monetary Affairs Committee which contains ECON's proposed negotiating position and suggested amendments to the ESG Rating Providers Proposal put forward by the European Commission.

The Council of the EU subsequently published a press release on 20 December 2023 confirming that it had also reached an agreement on its negotiating mandate on the ESG Ratings Providers Proposal.

Trilogue negotiations between the European Commission, the European Parliament and the Council of the EU on the ESG Rating Providers Proposal are expected to commence in January 2024.

A copy of the ESG Rating Providers Proposal put forward by the European Commission in June 2023 is available [here](#).

A copy of the revised legislative text published by the European Parliament is available [here](#).

A copy of the negotiating mandate published by the Council of the EU is available [here](#).

## 8.6 ESMA announces common supervisory action on ESG disclosures under the Benchmarks Regulation

On 13 December 2023, ESMA published a press release confirming that it will carry out a common supervisory action with National Competent Authorities (**NCA**s) on ESG disclosures under the Benchmarks Regulation<sup>10</sup>.

The purpose of this common supervisory action is to assess the extent to which benchmark administrators providing Paris-aligned benchmarks or climate-transition benchmarks are complying with the ESG disclosure requirements under the Benchmarks Regulation.

The common supervisory action will be carried out during 2024 until Quarter 1 2025.

A copy of the ESMA press release is available [here](#).

## 8.7 European Parliament and Council of EU reach provisional agreement on proposed Corporate Sustainability Due Diligence Directive

On 14 December 2023, the European Parliament and the Council of the EU announced that they had reached political agreement on the proposed Corporate Sustainability Due Diligence Directive (**CSDDD**).

The CSDDD will oblige large companies to identify and, where necessary, mitigate the adverse impacts of their activities on human rights (including child labour and the exploitation of workers) and on the environment (including pollution and biodiversity loss) and will apply not only to the relevant company's operations but also those of its subsidiaries and their value chains.

The finalised agreed text has not yet been published. However, the Council of the EU suggests in its press release that financial services companies will be "temporarily excluded from the scope of the directive" and notes that a review clause will be included in the CSDDD requiring re-consideration of this position when the legislation is first reviewed post-implementation.

However, the European Parliament's press release indicates that financial services companies meeting the relevant scoping criteria will however be required to adopt a plan ensuring their business model complies with limiting global warming to 1.5°C. In a press conference delivered by the European Parliament on the same date, it suggests that financial institutions will fall within the scope of the CSDDD with regard to their own operations and "upstream" operations

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<sup>10</sup> Regulation (EU) 2016/1011 as amended

Further clarity on the precise scope of the CSDDD will emerge once the text of the provisional agreement is made available.

The political agreement reached by the European Parliament and the Council of the EU is now subject to formal approval by the co-legislators. Once formally approved, it will be published in the OJ and EU member states will have 2 years to transpose the CSDDD into national law.

A copy of the Council of the EU's press release from 14 December 2023 is available [here](#).

A copy of the European Parliament's press release from the same date is available [here](#).

The European Parliament's press conference is available for viewing [here](#).

## 8.8 ESMA publishes articles on methodology for climate risk stress testing and analysis of financial impact of greenwashing controversies

On 19 December 2023, ESMA published an article which presents a methodological approach to modelling climate-related shocks in the funds sector.

On the same date, it also published an article highlighting how data on ESG controversies can be used to monitor potential reputational risks around greenwashing.

A copy of both articles are available [here](#).

## 8.9 CSRD: First set of ESRS reporting standards are published in the Official Journal

On 22 December 2023, the first set of European Sustainability Reporting Standards (**ESRS**) was published in the OJ.

These common reporting standards must be used by all companies which fall within the scope of the Corporate Sustainability Reporting Directive (**CSRD**) and take a "double materiality" perspective by requiring such companies to report on the impact of the relevant company on the environment and society as well as the financial risks and opportunities arising from climate change and other sustainability issues. By requiring the use of common standards in the form of the ESRS, it is intended that all in-scope companies report on sustainability matters in a comparable and reliable manner.

This first set of the ESRS are sector agnostic and must be used by all companies falling within the scope of the CSRD, regardless of the specific sector within which they operate. They comprise of the delegated act itself, Annex 1 which contains 12 sector-agnostic reporting standards and Annex 2 which contains acronyms and a glossary of terms used in the ESRS. The first standard, ESRS 1 sets down general principles to be applied when reporting according to ESRS and does not itself contain specific disclosure requirements. ESRS 2 specifies essential information to be disclosed irrespective of which sustainability matter is being considered and is mandatory for all in-scope companies. All of the remaining standards and the individual disclosure requirements and datapoints within them are subject to a materiality assessment. This means that each company will report only relevant information and may omit the information in question that is not relevant (or material) for its business model and activity.

The European Commission has proposed postponing the adoption of sector-specific ESRS for two years until June 2026 with the objective of allowing companies to focus on the implementation of the sector-agnostic ESRS.

The CSRD is being rolled out on a staggered basis on the following basis:

- Companies previously subject to the Non-Financial Reporting Directive (which comprise of large listed companies, large banks and large insurance undertakings – all if they have more than 500 employees), as well as large non-EU listed companies with

more than 500 employees: for financial years beginning on or after 1 January 2024, with the first sustainability statement being published in 2025.

- Other large companies, including other large non-EU listed companies: for financial years beginning on or after 1 January 2025, with the first sustainability statement being published in 2026.
- Listed SMEs, including non-EU listed SMEs: for financial years beginning on or after 1 January 2026, with the first sustainability statements being published in 2027<sup>11</sup>.

A copy of the first set of the ESRS can be found [here](#).

A copy of the CSRD can be found [here](#).

A copy of the Q&A published by the European Commission on the ESRS is available [here](#).

A copy of the European Commission's proposal to delay the adoption of sector-specific ESRS is available [here](#).

## 9. MISCELLANEOUS

### 9.1 European Commission publishes draft delegated acts on critical ICT third-party service providers and oversight fees under DORA

On 16 November 2023, the European Commission published two draft delegated acts (**Delegated Acts**) to be adopted under the Digital Operational Resilience Act (**DORA**).

As discussed in our previous Quarterly Legal and Regulatory Update, on 29 September 2023, the ESAs published joint technical advice to the European Commission in respect of the Delegated Acts to be adopted by the European Commission in response to the European Commission's request in December 2022 for the ESAs' input on certain aspects of DORA.

The Delegated Acts relate to:

- (i) the criteria to designate ICT third-party service providers as critical ICT third-party providers (**CTPP**); and
- (ii) the types of expenditure to be covered by oversight fees and the fee calculation.

The European Commission sought feedback on the Delegated Acts and the public consultation on the Delegated Acts ended on 14 December 2023.

The European Commission intends to adopt the Delegated Acts in the second quarter of 2024 and is required to adopt the Delegated Acts by 17 July 2024.

A copy of the Delegated Acts can be accessed [here](#).

For information on DORA more generally, which will apply from 17 January 2025, you can access the text of DORA [here](#) and our previous briefing on DORA [here](#).

<sup>11</sup> Listed SMEs may decide to opt out of the reporting requirements for a further two years. The last possible date for a listed SME to start reporting is financial year 2028, with first sustainability statement published in 2029.

## 9.2 Adoption of the recast directive on distance marketing of financial services

On 28 November 2023, Directive (EU) 2023/2673 amending Directive 2011/83/EU as regards financial services contracts concluded at a distance and repealing Directive 2002/65/EC (**Recast Directive on Distance Marketing of Financial Services or DMFSD**) was published in the OJ.

The DMFSD simplifies existing legislation and increases consumer protection for contracts concluded online, by phone, or by other forms of remote marketing. More specifically, the DMFSD replaces the Distance Marketing of Financial Services Directive (**2002 Directive**) and amends Directive 2011/83/EU (**Consumer Rights Directive or CRD**) by adding a new chapter to the CRD which includes consumer protections for financial services contracts concluded at a distance.

The key changes introduced by the DMFSD are as follows:

- Extension of certain CRD rules to financial services distance contracts such as provisions on enforcement, reporting and additional payments;
- Clarification on the scope of application of the DMFSD, including confirmation of the continued application of the “safety-net” feature of the 2002 Directive;
- Improved rules on information disclosure and modernisation of pre-contractual information (**PCI**) obligations (for instance, PCI is to be provided on a durable medium and is to include the environmental or social objectives targeted by the financial service);
- Establishes the right of consumer to request human intervention on sites that display automatic information (**AI**) tools such as chatbots or roboadvice;
- Introduces additional protection for consumers from dark patterns (such as user interfaces designed to nudge users into making unintentional or potentially harmful choices); and
- Introduces the requirement for a prominent and easy-to-find “withdrawal function” in the provider’s interface to facilitate consumers’ right of withdrawal.

The DMFSD entered force on 18 December 2023 and will apply from 19 June 2026, as Member States have 2 years to transpose the DMFSD into national law a further 6 months to apply it from its date of entry into force.

A copy of the DMFSD can be accessed [here](#).

## 9.3 ESAs launch consultation on second batch of DORA technical standards

On 8 December 2023, the Joint Committee of the ESAs published the second batch of DORA consultations, with the first batch of DORA consultations published earlier this year in June 2023. In total, the ESAs are required to develop 13 policy documents.

The second batch of DORA consultations consists of consultation papers on draft RTS, implementing technical standards (**ITS**), and guidelines under DORA concerned with the following areas:

- Major ICT-related incident reporting;
- Digital operational resilience testing;
- ICT third-party risk management; and
- Oversight over critical ICT third-party providers.

The second batch of DORA consultations is open for feedback by stakeholders until 4 March 2024.

The second batch of DORA consultations can be accessed [here](#).

For more information on the second batch of DORA consultations please refer to our recent client briefing [here](#).

#### 9.4 Publication of regulation creating a European Single Access Point published in the Official Journal

On 13 December 2023, Regulation (EU) 2023/2859 establishing a European single access point (**ESAP**) providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability (**ESAP Regulation**) was published in the OJ.

The ESAP Regulation establishes a framework under which financial and sustainability-related information about EU companies and EU investment products will be made publicly available via a single access point. It does not impose any additional reporting obligations on such entities but instead provides access to information already made public in accordance with existing EU legislation.

On the same date, Directive (EU) 2023/2864 of the European Parliament and of the Council of 13 December 2023 amending certain Directives as regards the establishment and functioning of the European single access point (**ESAP Omnibus Directive**) and Regulation (EU) 2023/2869 of the European Parliament and of the Council of 13 December 2023 amending certain Regulations as regards the establishment and functioning of the European single access point (**ESAP Omnibus Regulation**) were also published in the OJ.

Under the ESAP Regulation, the ESAP platform must be available by 10 July 2027.

A copy of the ESAP Regulation is available [here](#).

A copy of the ESAP Omnibus Directive is available [here](#).

A copy of the ESAP Omnibus Regulation is available [here](#).

#### 9.5 Extension of virtual meetings for Irish companies until 31 December 2024

On 15 December 2023, the Department of Enterprise, Trade and Employment confirmed that the interim period of the Companies (Miscellaneous Provisions) (Covid-19) Act 2020 related to the holding of virtual meetings, including AGMs, by Irish companies has been further extended to 31 December 2024.

A copy of the relevant statutory instrument giving effect to this extension is available [here](#).

#### 9.6 Conflict in Ukraine

On 18 December 2023, the Council of the EU announced the introduction of further restrictive measures against Russia under which new sectoral measures and asset freeze provisions were introduced under amendments made to Council Regulation (EU) 833/2014 and Council Regulation 269/2014 respectively.

A full overview of the changes introduced under this twelfth package of measures is available [here](#).

#### 9.7 The EBA consults on two sets of guidelines on internal policies, procedures and controls

On 21 December 2023, the EBA launched a public consultation paper on two sets of Guidelines on internal policies, procedures and controls to ensure the implementation of Union and national restrictive measures (**Draft Guidelines**).

The Draft Guidelines include:

- i) a set of draft guidelines addressed to financial institutions and NCAs within the EBA's supervisory remit, outlining regulatory expectations regarding the role of senior management, internal governance and risk management under CRD IV<sup>12</sup> PSD2<sup>13</sup>, and 2EMD<sup>14</sup>; and
- ii) a set of draft guidelines addressed specifically to payment service providers (**PSPs**), Crypto Asset Service Providers (**CASPs**) and NCAs, stipulating requirements for compliance with restrictive measures when performing transfers of funds and crypto-assets the recast Transfer of Funds Regulation<sup>15</sup> which will apply from 30 December 2024.

The Draft Guidelines are set to apply from 30 December 2024.

The public consultation on the Draft Guidelines is open until 25 March 2024 and responses can be submitted using the ["Send your comments" function](#) on the EBA's website.

A copy of the Draft Guidelines can be accessed [here](#).

A copy of the EBA's related press release can be accessed [here](#).

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<sup>12</sup> Directive 2013/36/EU

<sup>13</sup> Directive 2015/2366/EU

<sup>14</sup> Directive 2009/110/EC

<sup>15</sup> Regulation (EU) 2023/1113

If you have any questions in relation to the content of this update, to request copies of our most recent newsletters, briefings or articles, or if you wish to be included on our mailing list going forward, please contact any of the team members below.

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