



## Insurance

# Quarterly Legal and Regulatory Update

Period covered: 1 January 2024 – 31 March 2024

### TABLE OF CONTENTS

|                                |  |   |                       |
|--------------------------------|--|---|-----------------------|
| <u>SOLVENCY II</u>             | <u>EIOPA</u>   | <u>INSURANCE DISTRIBUTION DIRECTIVE (IDD)</u> | <u>PRIIPS</u>         |
| <u>CENTRAL BANK OF IRELAND</u> | <u>ANTI-MONEY LAUNDERING (AML) AND COUNTERING THE FINANCING OF TERRORISM (CFT)</u> | <u>DATA PROTECTION</u>                        | <u>SUSTAINABILITY</u> |
| <u>MISCELLANEOUS</u>           |  |   |                       |

## 1. SOLVENCY II

### 1.1 Council of the EU publishes final texts for Solvency II Directive Review and IRRD

On 25 January 2024, the Council of the EU (the **Council**) published its final compromise texts for:

- the proposed Directive (2021/0295 (COD)) amending Directive 2009/138/EC (the **Solvency II Directive**) as regards to proportionality, quality of supervision, reporting, long-term guarantee measures, macro-prudential tools, sustainability risks, group and cross-border supervision (**Proposed Directive**); and
- the proposed Insurance Recovery and Resolution Directive (2021/0296/COD) (**IRRD**).

The final compromise texts reflect the political agreement reached between the Council and the European Parliament in December 2023.

The next step will be for the final texts to be agreed by the European Parliament. If approved, the Council and the European Parliament will then have to formally adopt the final texts.

A copy of the final text for the Proposed Directive can be accessed [here](#).

A copy of the final text for the IRRD can be accessed [here](#).

### 1.2 European Commission adopts draft Decision on Renewal of Equivalence of US under Solvency II regime

On 14 March 2024, the European Commission adopted a draft Commission Delegated Decision (C(2024) 1753) (the **Draft Delegated Decision**) on the renewal of its determination that the solvency regime operative in the US applicable to undertakings with their head office in that country is provisionally equivalent to that laid down in Title 1, Chapter VI of the Solvency II Directive.

Commission Delegated Decision (EU) 2015/2990 (the **Current Delegated Decision**) provides provisional equivalence under Article 227 of the Solvency II Directive to the US (as well as other non-EU jurisdictions). The Current Delegated Decision applies from 1 January 2016 until 1 January 2026.

The European Commission and the European Insurance and Occupational Pensions Authority (**EIOPA**) have concluded that the factual statements set out in the Current Delegated Decision relating to the US remain the same. As a result, and in accordance with Article 227 of the Solvency II Directive, the Draft Delegated Decision puts forward the renewal of the US provisional equivalence for ten years from 1 January 2026.

The Draft Delegated Decision is currently under consideration by the European Parliament.

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

## 2. EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY (EIOPA)

### 2.1 EIOPA publishes EU-wide Supervisory Priorities for 2024 - 2026

On 11 March 2024, EIOPA published its "Union-Wide Strategic Supervisory Priorities 2024-2026".

In its document, EIOPA identifies two strategic objectives that should be monitored in cooperation with the National Competent Authorities (**NCA**s) within the three-year cycle: i) financial robustness of insurance undertakings; and ii) consumer protection in a disruptive environment.

In consideration of both of these objectives, EIOPA has identified the following specific areas to be considered as supervisory priorities for 2024:

- Continuous monitoring of the impact of the macroeconomic environment;
- Risk transfers including the capacity and appropriateness of risk transfers; and
- Value for money including in relation to inflation and current macro-economic trends.

A copy of EIOPA's "Union-Wide Strategic Supervisory Priorities 2024-2026" can be accessed [here](#).

### 3. INSURANCE DISTRIBUTION DIRECTIVE (IDD)

#### 3.1 EIOPA publishes Report on Application of the IDD

On 15 January 2024, EIOPA published its second report on the application of Directive (EU) 2016/97 (the **Insurance Distribution Directive** or **IDD**) (the **Report**).

The Report addresses how the IDD has been applied by the insurance industry and by NCAs.

The Report covers a number of topics, including:

- Changes in the structure of the EU insurance distribution market;
- Changes in the patterns of cross-border activity;
- The improvement of quality of advice and selling methods and the impact of the IDD on insurance intermediaries which are small and medium-sized enterprises;
- The impact of higher inflation and rising interest rates on the insurance market and customers;
- Whether NCAs are sufficiently empowered and have adequate resources;
- The impact of the new regulatory framework, noting challenges related to digitalisation, sustainability integration, and the need for additional guidance on the conditions under which a policyholder of a group insurance contract acts as an insurance intermediary; and
- The impact of the IDD on the supervisory framework, noting shortcomings in its application in respect of conflicts of interest emerging from remuneration arrangements and cross-selling practices, causing harm to consumers and calling for more guidance on the product oversight and governance framework.

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

#### 3.2 EIOPA publishes Annual Report on Administrative Sanctions and Other Measures imposed under IDD

On 17 January 2024, EIOPA published its fourth annual report on administrative sanctions and other measures imposed under the IDD during 2022 (the **Report**).

The key findings of the Report can be summarised as follows:

- In 2022, 2,762 sanctions were imposed across 21 Member States, with fines imposed of an aggregated value of EUR 528,807;
- Since the IDD has been in effect in 2018, and particularly between 2021 and 2022, there has been an increase in the number of sanctions imposed for breaches of the information and conduct of business requirements under Chapter 5 and 6 of the IDD which cover rules on selling methods, product designs, and managing conflicts of interest. EIOPA has noted that these requirements include the most substantive consumer protection requirements set out in the IDD;

- The majority of sanctions issued during 2022 relate to breaches of requirements on professional and organisational measures under Article 10 of the IDD. However, this feature has been driven by a high number of such sanctions in a small number of Member States; and
- Since the implementation of the IDD, sanctions have been imposed in all but three Member States, and in most Member States a pattern is emerging of a broadly similar number of sanctions being imposed each year.

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

### 3.3 Commission Delegated Regulation amending PII cover and financial capacity of intermediaries under IDD published in OJ

On 20 March 2024, Commission Delegated Regulation (EU) 2024/896 amending the IDD (the **Delegated Regulation**) was published in the Official Journal of the European Union (**OJ**). The Delegated Regulation amends the IDD with regard to regulatory technical standards (**RTS**) adapting the base euro amount for professional indemnity insurance (**PII**) and for financial capacity of insurance and reinsurance intermediaries.

The Delegated Regulation amends the IDD to require intermediaries to:

- Hold PII cover or an equivalent guarantee for at least EUR1,564,610 per claim, and in aggregate EUR2,315,610 per year for all claims; and
- Have financial capacity amounting, on a permanent basis, to 4% of the sum of annual premiums received, subject to a minimum of EUR23,480.

The Delegated Regulation is based on the RTS submitted to the European Commission by EIOPA in July 2023.

The Delegated Regulation entered into force on 9 April 2024 (20 days after publication in the OJ) and will apply from 9 October 2024.

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

## 4. PRIIPS

### 4.1 Publication of revised ESA Q&A on PRIIPS Regulation

On 15 March 2024, the ESAs<sup>1</sup> published a revised version of their Q&A on the PRIIPS KID.

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

### 4.2 ECON Committee of European Parliament approves amendments to PRIIPS Regulation

As part of its Retail Investment Strategy announced in May 2023, the European Commission has proposed that a number of changes be made to the PRIIPS Regulation.

These proposals are currently being considered by the European Parliament and the Council of the EU.

On 20 March 2024, the European Parliament's Economic and Monetary Affairs Committee (**ECON Committee**) approved a revised draft of the proposal. Amendments to the proposals originally put forward by the European Commission proposed by the ECON Committee include:

<sup>1</sup> The ESAs are the: European Banking Authority (**EBA**) European Insurance and Occupational Pensions Authority (**EIOPA**) European Securities and Markets Authority (**ESMA**)

- (i) extending the PRIIPS KID from 3 to 4 pages; and
- (ii) imposing an obligation on the ESAs, in conjunction with NCAs, to develop an independent online comparison tool to allow investors to compare products and filter categories of products by Member States. They have proposed that a link to the tool should be disclosed in each PRIIPS KID once the tool is available.

The proposals put forward by the ECON Committee must now be voted by the European Parliament at plenary session. The Council of the EU must also consider the proposals under the ordinary legislative procedure.

A copy of the revised proposals adopted by the ECON Committee is available [here](#).

The original proposal put forward by the European Commission on amendments to the PRIIPS Regulation is available [here](#).

A Dillon Eustace briefing providing an overview of the European Commission's original proposals to amend the PRIIPS Regulation is available [here](#).

## 5. CENTRAL BANK OF IRELAND

### 5.1 Central Bank amends scope of PCF-16 Branch Manager outside of the State

In February 2024, the Central Bank of Ireland (**Central Bank**) published an information note qualifying the scope of the role of "PCF 16 Branch Manager outside of the State" under its Fitness & Probity regime.

In that communication, the Central Bank confirmed that the role of branch manager of a branch established outside of the State (i.e. an "outgoing" branch) will only constitute a PCF-16 role for the purposes of its Fitness & Probity regime 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 relevant regulated financial service provider. As a result, only those individuals proposed to be appointed to the role of branch manager of an outgoing branch which meets this materiality threshold will be required to be prior approved by the Central Bank before assuming the role.

Where an outgoing branch of an Irish regulated financial service provider does not meet the applicable materiality threshold, the relevant firm was required to end-date the relevant PCF-16 role, by way of resignation, on the Central Bank's Portal by 29 March 2024.

A copy of the relevant information note is available [here](#).

### 5.2 Central Bank announces independent review into its Fitness & Probity approval process

On 14 February 2024, the Irish Financial Services Appeal Tribunal (**IFSAT**) published a judgement in relation to a decision by the Central Bank to refuse an individual's application to perform a pre-approved control function. In its judgement, IFSAT described the decision-making process followed by the Central Bank in the approval process of the relevant individual as "flawed" and noted that the individual had been denied fair procedures at each stage of the process. IFSAT returned the application to the Central Bank for reassessment by it.

Following this judgement, the Central Bank announced that it has commissioned an independent review of its Fitness & Probity approval process which will be conducted in accordance with published terms of reference. The outcome of this review will be published once completed. The Central Bank has noted that it will continue to operate its Fitness & Probity approval process in accordance with agreed service standards while this review is being carried out.

For a detailed overview of the IFSAT judgement, please refer to our briefing on the topic which is available [here](#).

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

The public statement published by the Central Bank following the IFSAT judgement is available [here](#).

A copy of the terms of reference issued by the Central Bank for the review is available [here](#).

### 5.3 Central Bank publishes Checklist for Change of Business Notification

On 28 February 2024, the Central Bank published a “Checklist for Completing and Submitting a Change of Business Notification for a (re)insurance undertaking authorised under the European Union (Insurance and Reinsurance) Regulations 2015” (the **Checklist**)

The Checklist is intended to accompany a “Change of Business Plan” request by a (re)insurance undertaking on the Central Bank Portal. The Checklist sets out the required steps for (re)insurance undertakings when planning to undertake a material change of business.

Prior to submitting the Checklist, (re)insurance undertakings are advised to first contact the Central Bank Supervision Team to discuss the proposed change of business.

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

The Central Bank’s related webpage can be accessed [here](#).

### 5.4 Central Bank publishes first Regulatory Supervisory Outlook Report

On 29 February 2024, the Central bank published its first “Regulatory & Supervisory Outlook” report (**Report**).

The Report sets out the Central Bank’s perspective on the key trends and risks as well as outlining its regulatory and supervisory priorities for the next two years across all of the sectors regulated by it.

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

### 5.5 Central Bank publishes Quarterly Insurance Newsletter

In March 2024, the Central Bank published its Quarterly Insurance Newsletter.

The Newsletter addresses the following topics:

- Motor Insurance – Review of Pricing and Claims Practices;
- Feedback re: Implementation of SII Taxonomy 2.8.0, Q4 2023 Reporting;
- Stakeholder Engagement;
- EIOPA updates; and
- Central Bank updates.

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

### 5.6 Central Bank publishes consultation paper on its Consumer Protection Code

On 7 March 2024, the Central Bank published a Consultation Paper 158 titled “Consultation Paper on the Consumer Protection Code” (the **Consultation Paper**).

The Consultation Paper outlines how the Central Bank proposes to revise and enhance its existing consumer protection code to clarify how firms should meet existing “best interests” obligations as well as to reframe, clarify and enhance consumer protection across a range of issues, including for example (i) digitalisation, (ii) informing effectively, (iii) frauds and scams, (iv) vulnerability and (v) climate risk. The revised consumer protection code will consolidate a range of existing Central Bank rules and codes.

The Central Bank has proposed that the revised code will take the form of two new Central Bank regulations.

The first of these, titled the Central Bank Reform Act 2010 (Section 17A) Regulations, will house the “business standards” referenced in the Central Bank (Individual Accountability Framework) Act 2023. These will replace and enhance the “General Principles” of the existing code and will be supplemented by “Supporting Standards for Business” which will provide further detail on firms’ obligations. These requirements will apply to all Irish regulated financial service providers.

The draft regulation is set out in Annex 3 to the Consultation Paper.

The second regulation, titled “Central Bank (Supervision and Enforcement Act) 2013 (Section 48) (Consumer Protection) Regulations” sets out cross-sectoral requirements and other sector-specific requirements. These requirements will apply to the regulated business of firms done with customers who meet the definition of “consumer” (i.e. individuals and small businesses). The draft regulation is set out in Annex 4 to the Consultation Paper.

The consultation closes on 7 June 2024.

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

For a detailed overview of the Consultation Paper, please refer to our briefing on the topic which is available [here](#).

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

### 6.1 Status update on EU AML Package

The EU AML Package comprises:

- the proposed Regulation (**AMLA Regulation or AMLAR**) establishing the Anti-Money Laundering Authority (**AMLA**);
- the proposed Regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (**AML Regulation**) (also known as the **EU AML/CFT single rulebook**);
- the proposed Sixth Anti-Money Laundering Directive (**MLD6**); and
- a Regulation to trace transfers of crypto-assets (**Recast Transfer of Funds Regulation**).

On 18 January 2024, the Council of the EU and European Parliament announced that provisional political agreement has been reached on the AML Regulation and on the MLD 6. Political provisional agreement has therefore now been reached on all aspects of the EU AML Package.

The final compromise texts reflecting the provisional political agreement reached on the AML Regulation and MLD6 were published by the Council of the EU on 13 February 2024. A copy of the provisional agreement on the AML Regulation and MLD6 can be accessed [here](#) and [here](#).

The final compromise text reflecting the political agreement reached on the AMLA Regulation was also published by the Council of the EU on 12 February 2024. A copy of the provisional agreement on the AMLA Regulation can be accessed [here](#).

The European Parliament is expected to vote on its final approval of the AMLA Regulation, the AML Regulation, and the MLD6 during its plenary session to be held between 22-25 April 2024. The publication of the final texts of the AML Regulation, MLD6 and the AMLA Regulation is expected in summer 2024.

### ***Location of AMLA Seat Finalised***

On 22 February 2024, the Council of the EU published a press release announcing that an agreement was reached between it and the European Parliament on Frankfurt as the seat for the new AMLA. The AMLA will begin its operations in mid-2025 and until then the Commission will establish the authority and begin its initial operations.

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

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

### ***Commission requests EBA technical advice***

On 12 March 2024, the EBA published a "call for advice" (**Call for Advice**) from the European Commission in respect of RTS and guidelines that should be developed by AMLA and adopted by the Commission under the proposed new EU AML framework.

The Call for Advice is provisional until the AMLA Regulation, the AML Regulation and the MLD6 are finalised and enter into force.

The EBA is required to deliver its advice to the Commission by 31 October 2025.

A copy of the Call for Advice can be accessed [here](#).

## **6.2 Updates to EU list of high-risk third countries under MLD4**

### ***Removal of Cayman Islands and Jordan from EU list of high-risk countries***

On 18 January 2024, a Commission Delegated Regulation (EU) 2024/163 (**Delegated Regulation**) was published in the OJ. The Delegated Regulation removes Cayman Islands and Jordan from the list of high-risk third countries published by the European Commission<sup>2</sup>.

The Delegated Regulation entered into force on 7 February 2024.

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

### ***Addition/removal of further countries from EU list of high-risk countries***

On 14 March 2024, the Commission adopted a further delegated regulation C (2024) 1754 (the **Draft Delegated Regulation**) to amend the list of high-risk third countries.

The Draft Delegated Regulation adds Kenya and Namibia to the List and removes Barbados, Gibraltar, Panama, Uganda and the United Arab Emirates from the list.

The Draft Delegated Regulation will now be scrutinised by the Council of the EU and the European Parliament before being published in the OJ and taking effect 20 days thereafter.

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

<sup>2</sup> As set out in Annex to Commission Delegated Regulation (EU) 2016/1675 supplementing MLD4 as revised

## 7. DATA PROTECTION

### 7.1 European Commission launches call for evidence on GDPR review

On 11 January 2024, the European Commission launched a call for evidence seeking the views of EU citizens and stakeholders on the application of the General Data Protection Regulation (**GDPR**).

Under Article 97 of the GDPR, the European Commission is obliged to review the GDPR every 4 years, following the initial review completed by 25 May 2020. Article 97 requires the Commission to produce a report on its review, which is to focus in particular on the application and functioning of the requirements for the international transfer of personal data to third countries and the co-operation and consistency mechanism between national data protection authorities.

Responses to the call for evidence will inform the Commission's report on the GDPR review, which is due to be submitted to the European Parliament and Council of the EU by mid-2024.

The consultation period for feedback closed on 8 February 2024.

A copy of the call for evidence is available [here](#).

## 8. SUSTAINABILITY

### 8.1 Political agreement reached on proposal for regulation of ESG rating activities

On 5 February 2024, the Council of the EU (**Council**) announced that it had reached provisional agreement with the European Parliament (**Parliament**) on a proposed regulation governing ESG rating providers in order to improve the quality, reliability and comparability of ESG ratings.

Under the new framework, ESG rating providers established within the EU will need to obtain an official authorisation from the European Securities and Markets Authority (**ESMA**) while ESG rating providers established in third countries but operating within the EU must either be (i) located in a third country which is in receipt of an equivalence decision under the framework, (ii) endorsed by an ESG rating provider established in the EU or (iii) recognised by ESMA provided that the ESG rating provider has a consolidated annual net turnover for the latest consecutive three years of less than €15 million.

In-scope ESG rating providers will be required to comply with specific organisational, conflicts of interest and governance requirements as well as complying with detailed transparency obligations which should provide investors with information on the methodologies, models and key rating assumptions used in their rating activities

All financial market participants falling within the scope of the SFDR<sup>3</sup> will be required to include a link in any marketing communications which reference ESG ratings to website disclosures providing information about the methodologies used in such ESG ratings. Under the proposed regulation, regulated financial undertakings which incorporate ratings into products already regulated under EU law and which disclose those ratings to a third party (e.g. in marketing communications for example) will not be required to be authorised under the regulation but will be subject to certain disclosure obligations relating to the methodology used etc.

The draft regulation is now subject to approval by the Council and the Parliament before going through the formal adoption procedure. It will then be subject to certain transitional provisions, start applying 18 months after its entry into force.

A copy of the text provisionally agreed by the Council and the Parliament is available [here](#).

<sup>3</sup> Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector

A copy of the press release published by the Council is available [here](#).

## 8.2 Significant changes to draft Corporate Sustainability Due Diligence Directive approved by Council of the EU

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

However, subsequent to this, substantive changes were made to the CSDDD as a result of significant concerns being raised by certain EU Member States. On 15 March 2024, those changes to the CSDDD were approved by the Council's Permanent Representative Committee (**Council PRC**).

Based on the text approved by the Council PRC, the CSDDD will oblige EU large companies (with at least 1000 employees and turnover of €450 million) and non-EU companies with a turnover of at least €450 million in the EU to (i) adopt and implement a climate transition plan and (ii) carry out appropriate due diligence 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). This latter obligation will apply not only to the relevant company's operations but also those of its subsidiaries and their value chains. In-scope regulated financial undertakings will only be covered with respect to upstream activities (i.e. their own operations and upstream supply chains only).

If approved by the European Parliament in a vote in April 2024, the text of the finalised CSDDD will then need to be formally approved by the Council before being published in the OJ. Member States will have two years from the date of entry into force to transpose its provisions into national law. Companies will be required to comply with the CSDDD in accordance with the applicable transition provisions outlined in the CSDDD with smaller companies having a longer transitional period within which to align with the CSDDD.

A copy of the draft CSDDD approved by the Council PRC is available [here](#).

A copy of the related press release from the Council is available [here](#).

## 8.3 ESG Round-Up

### *(i) Delay of adoption of sustainability reporting for certain sectors and certain third-country undertakings under CSRD*

On 8 February 2024, the European Parliament and the Council of the EU reached political agreement on the Commission's proposal to postpone the deadline for adopting sector-specific European sustainability reporting standards under the Corporate Sustainability Reporting Directive (**CSRD**)<sup>4</sup> framework by two years until mid-2026.

Entities falling within the scope of the CSRD continue to be required to comply with the "general" sector-agnostic sustainability reporting standards which apply to all in-scope companies regardless of their economic sector in accordance with the timeframes set down in the CSRD and related ESRS.

The provisional agreement reached between the Council of the EU and the European Parliament must be endorsed and formally adopted by both institutions before being published in the OJ.

### *(ii) ESMA publishes consultation paper on EU Green Bond Regulation*

Under the EU Green Bond Regulation<sup>5</sup>, ESMA is tasked with developing technical standards and guidelines specifying certain provisions in order to give effect to the provisions of that regulation.

<sup>4</sup> Directive (EU) 2022/2464

<sup>5</sup> Regulation (EU) 2023/2631

On 26 March 2024, it launched a consultation on draft technical standards under the EU Green Bond Regulation relating to the registration and review of external reviewers who are empowered under the regulation to provide an independent opinion on whether an issuer of European green bonds complies with the Taxonomy requirements of the European Green Bond Regulation.

The consultation closes on 14 June 2024 and ESMA expects to publish a final report in Quarter 4 2024 and submit draft technical standards to the European Commission for endorsement by 21 December 2024 at the latest.

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

A copy of the EU Green Bond Regulation is available [here](#).

**(iii) EFRAG publishes technical explanations on ESRS Sustainability Reporting Standards under the CSRD.**

On 5 February 2024, the European Financial Reporting Advisory Group (EFRAG) released a first set of technical explanations provided to assist stakeholders in the implementation of the ESRS which are available [here](#).

On 1 March 2024, EFRAG released a second set of technical explanations which are available [here](#).

**(iv) ESMA publishes revised edition of consolidated Q&A on SFDR**

On 12 January 2024, ESMA published a revised edition of the consolidated Q&A on SFDR which consolidates responses given by the European Commission (colour coded in blue) and the ESAs (not colour coded) on the implementation of the SFDR and related delegated acts into the one document.

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

## 9. MISCELLANEOUS

### 9.1 Commission adopts delegated regulations supplementing Digital Operational Resilience Act (DORA)

On 22 February 2024, the Commission adopted the following delegated regulations supplementing DORA:

- Draft Commission Delegated Regulation specifying the criteria for the designation of ICT third-party service providers as critical for financial entities (which can be accessed [here](#)); and
- Draft Commission Delegated Regulation determining the amount of the oversight fees to be charged by the lead overseer to critical ICT third-party service providers and the way in which those fees are to be paid (which can be accessed [here](#)).

On 13 March 2024, the Commission adopted three further delegated regulations under DORA, including:

- Draft Commission Delegated Regulation setting out RTS specifying the criteria for the classification of ICT-related incidents (which can be accessed [here](#));
- Draft Commission Delegated Regulation setting out RTS specifying ICT risk management framework and the simplified ICT risk management framework (which can be accessed [here](#)); and
- Draft Commission Delegated Regulation setting out RTS specifying the detailed content of the policy on ICT services performed by ICT third-party providers (which can be accessed [here](#)).

The draft delegated regulations will now be scrutinised by the Council of the EU and the European Parliament before finalised versions of the delegated regulations are published in the OJ.

## 9.2 Further package of economic sanctions against Russia announced by Council of the EU

On 23 February 2024, the Council of the EU announced that it had adopted the 13<sup>th</sup> package of sanctions against Russia.

The focus of this package is the targeting of Russia's military and defence sector and combating sanctions circumvention through further designations and it contained 194 individual designations, including 106 individuals and 88 entities.

The European Commission's webpage on sanctions adopted following Russia's military aggression against Ukraine is available [here](#).

The Central Bank's webpage on EU restrictive measures relating to actions in Ukraine is available [here](#).

## 9.3 European Parliament approves European Union Artificial Intelligence Act

On 13 March 2024, the European Parliament approved the European Union's first Artificial Intelligence Act (**EU AI Act**).

The EU AI Act is intended to set down a comprehensive legal framework for the use, marketing and supply of artificial intelligence (**AI**) systems across the European Union. It provides a risk-based classification for AI systems with different requirements and obligations tailored depending on the level of potential risks and level of impact associated with the relevant system. It will apply to all EU-based users of AI systems where the software forms part of the user's own systems (save where used in the course of a personal non-professional activity) as well as those who provide, import or distribute AI systems within the European Union.

Those AI systems that are considered to create an unacceptable risk to people's safety, livelihoods and rights are banned. Those AI systems categorised as "high-risk" on the basis that they can potentially have a detrimental impact on people's health, safety or on their fundamental rights are permitted, but will be subject to a set of requirements and obligations to gain access to the EU market.

AI systems considered to pose limited risks of impersonation or deception because of their lack of transparency (such as chatbots or deepfakes) will be subject to information and transparency requirements which include making the user aware that they are interacting with the AI system, while all other AI systems presenting only minimal risk will not be subject to further obligations under the EU AI Act.

Specific rules are set down for "general purpose AI models" or "GPAI" models (such as large language models and generative AI applications) with more stringent requirements for GPAI models with "high-impact capabilities" that could pose a systemic risk and have a significant impact on the internal market. The framework is not intended to apply to cover simpler, traditional software systems with the legislation noting that a key characteristic of an AI system is its capability to infer.

Under the EU AI Act, each Member State will be required to designate one or more competent authorities, including a national supervisory authority, which is tasked with supervising the application and implementation of the regulation. The framework also establishes the administrative sanctions that can be imposed on those failing to comply with the EU AI Act.

The EU AI Act is now expected to be adopted at first reading by the Council of the EU before being published in the OJ. It will enter into force 20 days after its publication in the OJ and will, subject to the specific transitional provisions set down in the legislation, generally apply two years from the date of entry into force.

The Commission is expected to issue various implementing and delegated regulations and guidelines related to the EU AI Act in the coming months.

A copy of the EU AI Act approved by the European Parliament is available [here](#).

The press release published by the European Parliament announcing its approval of the EU AI Act is available [here](#).

## 9.4 ECON Committee adopts report on EU Retail Investment Strategy

As part of its Retail Investment Strategy announced in May 2023, the European Commission has proposed that a number of changes be made to the MiFID II Directive<sup>6</sup>, the IDD, the UCITS Directive<sup>7</sup>, AIFMD<sup>8</sup> and the Solvency II Directive by way of an omnibus directive.

These proposals are currently being considered by the European Parliament and the Council of the EU.

On 21 March 2024, the ECON Committee of the European Parliament published a press release announcing that it had adopted a draft report containing its amendments to the omnibus directive originally proposed by the European Commission. This report has now been tabled for approval by the European Parliament during its first plenary session in April 2024 with the ECON Committee noting that the file will be followed up by the new Parliament after the European elections which are being held on 6-9 June 2024.

The draft text of the omnibus directive states that EU Member States will have to transpose its provisions into national law 12 months after it enters into force. Some provisions will have an 18-month transposition deadline. It is therefore currently anticipated that the final version of the omnibus directive will not be fully in effect until 2026 at the earliest.

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

## 9.5 Reporting obligation on transfer of funds by EU entities (partly) owned by Russian entities or persons outside of the European Union

As of 1 May 2024, under Council Regulation (EU) 2023/2878, any EU legal entity, legal person or legal body whose "proprietary rights" are directly or indirectly owned for more than 40% by (i) a legal person, entity or body established in Russia, (ii) a Russian national; or (iii) a natural person residing in Russia (each an **In-Scope EU Entity**) must report any transfer of "funds" outside of the European Union made by them which exceeds €100,000 to their relevant NCA within two weeks of the end of each calendar quarter.

This "outgoing transfer" reporting obligation is intended to provide NCAs better visibility on the flow of funds related to Russian-owned entities out of the EU, without jeopardising the activities of entities that are (partly) Russian-owned and operating legitimately in the EU.

All transfers of funds outside of the European Union during the relevant quarter must be aggregated to determine whether the threshold has been exceeded. "Funds" for this purpose include without limitation cash, other payment instruments, deposits with banks, dividends, shares, bonds and notes. Both direct and indirect transfers of amounts exceeding €100,000 must also be taken into account.

On 12 April 2024, the Commission published a revised edition of its FAQ on EU restrictive measures relating to actions in Ukraine to include specific guidance on the above-mentioned reporting obligation which is contained in Chapter 13 of Part C entitled "Reporting on outgoing transfers" (**Revised FAQ**).

The Revised FAQ confirms that the first reporting by In-Scope EU Entities should cover the period from 1 January and 31 March 2024 and states that the obligation to the relevant competent authority does not apply until 1 May 2024. It also confirms that information of any transfers made by In-Scope EU Entities during the second quarter 2024 should be reported to the relevant competent authority by 15 July 2024.

The Commission has also published a reporting template which can be used by In-Scope EU Entities for the purposes of reporting the relevant information to its NCAs. However, the Commission has noted that this is a recommendation, and that In-Scope EU Entities are not obliged to use this specific template for the purposes of complying with this reporting obligation.

A copy of Council Regulation (EU) 2023/2878 is available [here](#).

<sup>6</sup> Directive 2014/65/EU

<sup>7</sup> Directive 2009/65/EC

<sup>8</sup> Directive 2011/61/EU

A copy of the revised edition of the Commission's FAQ is on EU restrictive measures relating to actions in Ukraine is available [here](#).

A copy of the Commission's reporting template is available [here](#).

The Central Bank's webpage on EU restrictive measures relating to actions in Ukraine is available [here](#).

## **9.6 Reporting obligation on credit and financial institutions which initiate transfer of funds on behalf of EU entities (part) owned by Russian entities or persons outside of the European Union**

As of 1 May 2024, credit institutions and financial institutions must report to their NCA information on all transfers of funds outside of the EU of a cumulative amount exceeding €100,000 that they initiated, directly or indirectly, for an In-Scope EU Entity (as described in Section 9.5 above) during the previous semester within two weeks of the end of the relevant semester.

The Revised FAQ (referenced in Section 9.5 above) confirms that the first report to be made by in-scope credit institutions and financial institutions should cover the period from 1 January 2024 to 30 June 2024 and should be submitted to the relevant competent authority by 15 July 2024. It also confirms that this reporting obligation imposed on credit and financial institutions applies regardless of whether or not the In-Scope EU Entity has already reported the relevant transfer to its NCA.

As noted in Section 9.5 above, the Commission has also published a reporting template which can be used by in-scope credit institutions and financial institutions for the purposes of reporting the relevant information to their NCAs. The Commission has noted that this is a recommendation, and that in-scope credit institutions or financial institutions are not obliged to use this specific template for the purposes of complying with this reporting obligation.

Links to all relevant documents are provided at Section 9.5 above.

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.

**Keith Waine**

E-mail: [keith.waine@dilloneustace.ie](mailto:keith.waine@dilloneustace.ie)

Tel : + 353 1 673 1822

Fax: + 353 1 667 0042

**Karen Jennings**

E-mail: [karen.jennings@dilloneustace.ie](mailto:karen.jennings@dilloneustace.ie)

Tel : + 353 1 673 1810

Fax: + 353 1 667 0042

**Laura Twomey**

E-mail: [laura.twomey@dilloneustace.ie](mailto:laura.twomey@dilloneustace.ie)

Tel : + 353 1 673 1848

Fax: + 353 1 667 0042coln

**Caoimhe Costello**

E-mail: [caoimhe.costello@dilloneustace.ie](mailto:caoimhe.costello@dilloneustace.ie)

Tel : + 353 1 673 1856

Fax: + 353 1 667 0042

**DISCLAIMER:**

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace LLP.