



Funds

Quarterly Legal and Regulatory Update

Period covered: 1 April 2023 – 30 June 2023

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1. APPROACHING DEADLINES ¹

Approaching deadlines		
Q3 2023	1 July 2023	New Central Bank Client Asset Requirements which will apply UCITS management companies/AIFMs with extended MiFID 'top-up' permissions in respect of those 'top-up' activities which hold client assets, enter into force. For further information, please refer to our recent briefing on the topic.
	4 July 2023	The ESA consultation on proposed amendments to SFDR Level 2 Measures closes. For further information, please refer to our recent briefing .
	End July 2023	Although not yet confirmed, we understand that ESMA and the national competent authorities will launch a common supervisory action on SFDR in late July 2023.
	6 August 2023	Extended sanctions on the sale of Irish funds (and other EU funds) which provide exposure to transferable securities to certain Russian investors begin to apply. See Section 13.1 below for further information.
	23 August 2023	The European Commission's consultation on a proposed regulation on ESG rating providers closes. See Section 4.4 below for further information.
	30 September 2023	All Irish UCITS management companies and AIFMs must, where appropriate, put in place a plan to address any gaps identified from a gap analysis carried out against the findings and expectations of the Central Bank on costs and fees. For further information, please refer to our recent briefing on the topic.
Q4 2023	3 October 2023	ESMA revised guidelines on MiFID II suitability requirements begin to apply. ESMA revised guidelines on MiFID II product governance requirements are expected to apply from the same date.
	1 December 2023	Irish fund management companies must be in a position to evidence actions/plans taken to address the Central Bank's Cross-Industry Guidance on Operational Resilience by this date at the latest. The relevant guidance is available here .
Q1 2024	1 January 2024	Revised and additional delegated acts under the Taxonomy Regulation are due to begin to apply. See Section 4.4 below for further information

2. UCITS & AIFMD

2.1 Central Bank publishes updated guidance on ability of Irish domiciled funds to gain exposure to crypto assets

On 4 April 2023, the Central Bank of Ireland (**Central Bank**) published a revised edition of its Q&A on AIFMD and a revised edition of its Q&A on UCITS, in which it set out its revised position on the ability of Irish domiciled funds to gain exposure to "digital assets", often referred to as "crypto assets".

The Central Bank re-confirmed its position that it is highly unlikely to approve a UCITS or a RIAIF fund proposing any exposure (either direct or indirect) to digital assets.

¹ Funds falling within the scope of Article 8 or Article 9 of the SFDR must file updated pre-contractual annexes contained in Commission Delegated Regulation 2023/363 which contain additional disclosure obligations relating to exposure to Taxonomy-aligned fossil gas and nuclear energy economic activities with the Central Bank "as soon as possible and at the earliest opportunity".

In the case of QIAIF funds, the Central Bank confirmed as follows:

- Direct exposure by Irish QIAIFs to digital assets is not permitted until the Central Bank is satisfied that depositary safekeeping rules set down in the Irish AIFM Regulations can be satisfied. A pre-submission to the Central Bank from the proposed depositary demonstrating how it is satisfied that it can safekeep the digital assets in accordance with the rules set down in the Irish AIFM Regulations will be required in such circumstances.
- Any QIAIF proposing to gain indirect exposure to digital assets must comply with specific requirements imposed by the Central Bank relating to risk management, stress testing, disclosure and liquidity management arrangements amongst others.
- For open-ended QIAFs, a pre-submission to the Central Bank is required if the proposed indirect exposure to digital assets is in excess of 20% of NAV
- For closed ended QIAIFs/open ended QIAIFs with limited liquidity, a pre-submission to the Central Bank is required if the proposed indirect exposure to digital assets is in excess of 50% of NAV.

The updated Central Bank Q&A on AIFMD can be accessed [here](#).

The updated Central Bank Q&A on UCITS can be accessed [here](#).

The Dillon Eustace briefing on this topic can be viewed [here](#).

2.2 ESMA Q&A on the Application of the AIFMD and the UCITS Directive

On 14 June 2023, ESMA updated its Q&A on the application of the AIFMD and its Q&A on the application of the UCITS Directive (each a **Q&A**). The purpose of the Q&As is to promote common supervisory approaches and practices in the application of the AIFMD and UCITS frameworks and their respective implementing measures.

In both Q&As, ESMA confirmed as follows:

- An AIFM which wishes to manage an EU AIF domiciled in another EU Member State must passport investment management functions in respect of such EU AIF. ESMA has confirmed that it is not possible to passport ancillary services such as administration or marketing services into a host Member State without also passporting the investment management function.

Similarly, a UCITS management company which wishes to manage a UCITS fund domiciled in another EU Member State must passport investment management functions. ESMA confirms that it is not possible for a UCITS management company to passport only administration or marketing functions in a host EU Member State without also passporting investment management functions.

- The de-notification obligations set down in Article 32a(1) of AIFMD and Article 93a(1) of the UCITS Directive must be complied with by an AIFM or UCITS management company in circumstances where there are no investors in a host Member State, thus obliging such management companies to ensure that there are no investors uninformed about the market exit of the relevant fund, that all marketing is publicly terminated and that any marketing arrangements with third parties are terminated or modified to prevent any further marketing of the de-notified fund.

ESMA confirms that the sole exception to this requirement arises in the case of closed-ended ELTIF funds.

The revised Q&A on the application of the AIFMD confirms as follows:

- ESMA confirms that when calculating the leverage of an AIF real estate fund (being one whose core investment policy is to invest in real estate directly or indirectly), the AIFM must include the exposure contained in financial or legal structures involving third parties controlled by the AIF where those structures are specifically set up to directly or indirectly increase the exposure at the level of the AIF.
- ESMA confirmed that pre-marketing can be conducted by a third party on behalf of an authorised EU AIFM if that third party is authorised as a UCITS management company under the UCITS framework, as a MiFID firm or tied agent under MIFID II or as a credit institution under CRD;
- Unless otherwise required under national rules, registered AIFMs are not subject to the pre-marketing provisions set down in AIFMD.

In an earlier Q&A on the application of the AIFMD published by ESMA on 26 May 2023, it also confirmed that non-EU AIFMs cannot carry out pre-marketing activities under AIFMD unless this is permitted under the national laws of an individual Member State.

The Q&A on the application of the UCITS Directive also confirms the following:

- UCITS management companies are permitted to manage AIFs as AIFMs registered under Article 3 of the AIFMD Directive; and
- UCITS management companies are permitted to manage pension schemes under the IORP Directive² provided that they are authorised by their national competent authority to manage investment portfolios on a mandate basis in accordance with Article 6(3)(a) of the UCITS Directive³.

A copy of the most recent Q&A on the application of AIFMD published by ESMA can be accessed [here](#).

A copy of the ESMA Q&A on the application of the UCITS Directive is available [here](#).

2.3 ESMA Final Report on 2022 CSA on Valuation of UCITS and Open-Ended AIFs

On 24 May 2023, ESMA published its Final Report (**Final Report**) on the Common Supervisory Action (CSA) on Valuation of UCITS and Open-Ended AIFs (CSA) which it carried out, in conjunction with the national competent authorities of each EU Member State, in 2022. The CSA focused on those UCITS and open-ended AIFs investing in less-liquid assets such as unlisted equities, unrated bonds, corporate debt, real estate, bank loans and high yield bonds amongst others.

In its Final Report, ESMA highlights its expectations on the valuation arrangements which should be implemented by fund management companies. Amongst other matters, it outlines:

- The need for documented, transparent and well-established valuation policies and procedures which should be reviewed at least annually/at other appropriate intervals;
- That such policies and procedures should distinguish between valuation in normal and stressed market conditions and should ensure that appropriate remedial procedures have been implemented to ensure an early detection of valuation errors; and
- The obligation to ensure the functional independence of the valuation function from the portfolio management team and the need to avoid over-reliance on third party data providers.

The Final Report also provides specific guidance for those funds investing in private equity and real estate assets.

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

For a more detailed analysis of the Final Report, please refer to our Dillon Eustace briefing which is available [here](#).

² Directive (EU) 2016/2341 as amended

³ Directive 2009/65/EC as amended

Key Action Points

Fund Management Companies should review the findings outlined in the Final Report and consider whether any necessary amendments should be made to their valuation arrangements to ensure that same align with ESMA's supervisory expectations.

2.4 ESMA Peer Review on Central Bank's Implementation of Guidelines on ETFs and other UCITS Issues

On 17 May 2023, ESMA published its Follow-up Report (**Final Report**) to the Peer Review on the Guidelines on ETFs and other UCITS Issues conducted by ESMA in 2018 on the implementation of its Guidelines on ETFs and other UCITS Issues into the supervisory frameworks of certain EU national competent authorities, including the Central Bank.

The Final Report provides an overview of how the Central Bank supervises costs disclosures to investors in Irish funds on efficient portfolio management arrangements implemented by such funds. It also sets out the specific recommendations made by ESMA to the Central Bank around its supervisory practices in this area. This includes a recommendation that the Central Bank continues to monitor UCITS costs at set-up, which may include requesting a review of securities lending fee arrangements to ensure that the cost set-up of UCITS is in line with fair market rates. It also recommends taking "stringent supervisory action" where needed, including where the fees associated with such arrangements are high when compared with market rates and where the UCITS management company uses related parties to engage in such EPM techniques.

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

Key Action Points

UCITS management companies engaging in securities lending arrangements should review existing investor disclosures around such arrangements, with a particular focus on providing clear and transparent information on the costs associated with such arrangements and disclosing where any parties involved in such arrangements are related to the UCITS management company or its delegates.

2.5 AIFMD Reporting IT Technical Guidance

On 8 June 2023, ESMA published Revision 6 of its AIFMD Reporting IT Technical Guidance.

The new IT technical guidance Revision 6 introduces new rules making more fields mandatory or with stricter rules to improve data quality.

Revision 5 of the Guidance will continue to apply until November 2023 when Revision 6 will become applicable. The exact date on which Revision 6 will become applicable will be published in due course.

Revision 6 can be downloaded [here](#).

2.6 Proposals relating to Undue Costs Provisions in the UCITS and AIFMD frameworks

Publication of European Commission's Retail Investment Strategy

On 24 May 2023, the European Commission published its Retail Investment Strategy which includes proposals to amend the UCITS and AIFMD frameworks in the area of undue costs.

The European Commission has proposed the following:

- Existing guidance⁴ addressed to fund management companies to implement and periodically review a documented pricing process and to carry out an annual assessment of fees and costs should be placed on a statutory footing;
- Specific criteria must be satisfied in order for a cost to be considered “due” (with the detailed criteria for such assessment to be set down in delegated acts);
- When assessing whether a cost is “due”, fund management companies must compare the costs and fees charged to a fund against those charged to peer funds using, where relevant, an appropriate benchmark published by ESMA;
- Fund management companies will be required to report to their national competent authority on costs borne by investors; and
- Compensation should be paid to any investor who was charged undue costs and same should be notified to the relevant national competent authorities, the depositary and the fund auditors

The legislative proposals put forward by the European Commission must now be considered by the European Parliament and the Council of Europe.

Further information on the proposals put forward by the European Commission in its Retail Investment Strategy is available from [here](#).

A Dillon Eustace briefing which considers the proposals in greater detail can be viewed [here](#).

Publication of ESMA Opinion on Undue Costs

On 17 May 2023, a week prior to the publication of the European Commission's Retail Investment Strategy, ESMA published an Opinion to the European Commission in which it suggests clarifications to the legislative provisions under the UCITS Directive and the AIFMD relating to the notion of “undue costs” (**Opinion**).

This initiative was prompted by one of the findings of the ESMA 2021 Common Supervisory Action on costs and fees, which uncovered divergent market practices as to what industry reported as “due” or “undue” costs in funds. ESMA states that a lack of supervisory convergence on this topic leaves room for “regulatory arbitrage” and risks hampering competition in the EU market.

In the Opinion, ESMA has proposed to take the supervisory expectations enshrined in the 2020 ESMA Supervisory Briefing on the Supervision of Costs in UCITS and AIFs as a basis, and to ground these expectations into clearer legal requirements.

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

The ESMA Supervisory Briefing on the Supervision of Costs in UCITS and AIFs can be accessed [here](#).

2.7 European Commission requests advice from ESMA on UCITS Eligible Assets Directive Review

On 6 June 2023, the European Commission published a formal request to ESMA for technical advice on the review of the existing UCITS “eligible assets” rules which are set down under Directive 2007/156/EC (**Eligible Assets Directive**).

The Commission has asked ESMA to carry out an assessment of the implementation of the Eligible Assets Directive across all Member States and to present a set of recommendations on suggested amendments which ESMA believes should be made to the Eligible Assets Directive. This should include the following:

- An analysis of the consistent application, amongst others, of “delta-one” instruments related provisions, financial indices, EPM techniques, the definition of money market instruments as well as considering the notion of “liquidity” in respect of certain transferable securities; and

⁴ Set down in the ESMA Supervisory Briefing on Supervision of Costs in UCITS and AIFs and in the recent Central Bank Dear Chair Letter on Costs and Fees

- An assessment of the risks and benefits of UCITS use of delta-one instruments, derivatives and financial indices to gain exposure to asset classes not directly investable for UCITS funds as well as assessing the risks associated with asset classes such as structured/leveraged loans, catastrophe bonds, commodities, crypto assets and unlisted equities.

ESMA has been requested to deliver its technical advice by 31 October 2024.

The letter from the European Commission to ESMA can be accessed [here](#).

2.8 Trialogue Negotiations on AIFMD and UCITS reform stall and move to the Spanish Presidency

The trialogue negotiations on proposed reform of the AIFMD and UCITS frameworks have stalled after the Swedish Presidency of the Council of Europe informed Member States that it was not possible to reach political agreement on outstanding issues of delegation, the definition of loan originating funds, risk retention, leverage, the depositary passport, white-label services and undue costs.

The negotiations between the Council of Europe and the EU Parliament on these reforms are expected to now resume under the Spanish Presidency of the Council whose term runs from 1 July 2023 to 31 December 2023.

3. CENTRAL BANK OF IRELAND

3.1 Central Bank Consultation Paper containing Consolidated Guidelines in respect of the Central Bank's Administrative Sanctions Procedure (CP154)

On 9 March 2023, the Central Bank (Individual Accountability Framework) Act 2023 (**Act**) was signed into law.

The Act was introduced to promote individual accountability within the financial services sector and is intended to make individuals in key positions individually responsible for their actions within the scope of their roles. This includes senior management, directors and other decision makers with an impact on the firm's overall performance, with the ultimate goal being an improvement in integrity and stability.

The Act also introduces a number of important changes intended to enhance the Central Bank's Administrative Sanctions Procedure (**ASP**) which are intended to underpin and support the introduction of the individual accountability framework and to incorporate additional safeguards.

On 22 June 2023, the Central Bank published Consultation Paper 154 (**CP154**), which contains draft consolidated guidelines in respect of the ASP, for consultation. The consultation will close on 14 September 2023, following which the Central Bank will review all feedback received.

Interested stakeholders are invited to submit their feedback on CP154 to the Central Bank by the deadline of 14 September 2023 via email to ASPconsultation2023@centralbank.ie.

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

CP154 can be accessed [here](#).

3.2 Updated Central Bank Procedures for Fitness and Probity Investigations, Suspensions and Prohibitions

In April 2023, the Central Bank published updated regulations and guidance for its Fitness and Probity (**F&P**) investigations, suspensions and prohibitions procedures, which apply from 20 April 2023, namely the:

- Central Bank Reform Act 2010 (Procedures Governing the Conduct of Investigations) Regulations 2023; and

- Fitness and Probity - Investigations, Suspensions and Prohibitions: Guidance (April 2023)

(together the **Updated Regulations and Guidance**).

For further details on the Updated Regulations and Guidance, please refer to the Dillon Eustace briefing on this topic which is available [here](#).

4. SUSTAINABLE FINANCE

4.1 European Commission provides key clarifications on the SFDR framework

On 14 April 2023, the European Commission published its responses to questions posed by the ESAs on key aspects of the SFDR framework in September 2022.

Its responses provide guidance on a number of key concepts under the SFDR, including the following:

- The definition of “sustainable investment” under the SFDR and in particular how the “contribution” limb of the “sustainable investment” test can be satisfied;
- The scope of Article 9(3) of the SFDR, confirming that funds which passively track a Paris-Aligned benchmark or a Climate Transition benchmark can be classified as an Article 9(3) fund without being required to assess whether constituents of the benchmark satisfy the “sustainable investment” test under the SFDR;
- Confirmation that it is possible for an actively managed fund to fall within the scope of Article 9(3) of the SFDR provided that related disclosure obligations have been satisfied; and
- Confirmation that in order for a fund to consider principal adverse impacts of investment decisions on sustainability factors, procedures must be implemented to mitigate those impacts.

The European Commission guidance is available [here](#).

A copy of the questions posed by the ESAs on the SFDR framework in September 2022 is available [here](#).

For a full analysis of the implications of the European Commission’s guidance for Irish fund management companies, please refer to our recent briefing which is available [here](#).

You can also view a video hosted by Dillon Eustace on Recent Developments under the SFDR [here](#).

Key Action Points

Fund Management Companies which manage in-scope Article 8 funds and/or Article 9 funds should review the guidance published by the European Commission and assess whether any changes need to be made to internal processes and/or investor-facing documentation in order to align with that guidance.

4.2 ESA launches consultation on proposed amendments to SFDR Delegated Regulation

On 12 April 2023, the ESAs published a consultation paper on proposed amendments to the SFDR Delegated Regulation⁵.

The proposals put forward by the ESAs include, but are not limited to:

- An extension of the mandatory principal adverse impact (PAI) indicators to incorporate additional social indicators and targeted changes to some of the existing PAI indicators contained in the SFDR Delegated Regulation

⁵ Commission Delegated Regulation (EU) 2022/1288 as amended by Commission Delegated Regulation (EU) 2023/363

- Additional pre-contractual, periodic report and website disclosure obligations on any financial product which sets a greenhouse gas emissions reduction (or “decarbonisation”) target;
- An obligation for any fund management company which invests in “sustainable investments” within the meaning of the SFDR to disclose the quantitative thresholds used to determine that such investments do not significantly harm any environmental or social objectives; and
- Simplification of the existing pre-contractual and periodic report annexes and the inclusion of a dedicated dashboard of key information.

The consultation closes on 4 July 2023. The ESAs are expected to issue their final advice containing revisions to the SFDR Delegated Regulation to the European Commission for its consideration by the end of October 2023.

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

For more information on the proposals put forward by the ESAs in their consultation paper and potential implications for fund management companies, please see our Dillon Eustace briefing [here](#).

You can also view a series of videos hosted by Dillon Eustace on this topic [here](#).

Key Action Points

Fund Management Companies which manage in-scope Article 8 funds and/or Article 9 funds should monitor the progress of the proposed amendments to the SFDR Delegated Regulation and assess likely implications of finalised rules when same are published in October 2023.

4.3 ESMA Interim Report on Greenwashing

On 31 May 2023, ESMA published a progress (or interim) report on greenwashing in response to a request from the European Commission in May 2022 for input from the ESAs on the definition of greenwashing, the risks greenwashing can pose to investors and financial markets and potential improvements to the regulatory framework (**Report**).

In the Report, ESMA notes that the ESAs have developed a common understanding that greenwashing is “a *practice where sustainability-related statements, declarations, actions, or communications do not clearly and fairly reflect the underlying sustainability profile of an entity, a financial product or financial service*”. ESMA also confirms that greenwashing relates to claims made by both products and entities (such as fund management companies) and can occur either intentionally or unintentionally.

The Report assesses the risk of greenwashing across the sustainable investment value chain. It highlights key areas which are exposed to the risk of greenwashing for investment managers as including fund names and those claims relating to issuer engagement, ESG strategy, policies and credentials and sustainability impact. It also identifies preliminary remediation actions identified by ESMA to mitigate the risk of greenwashing.

ESMA is required to provide its final report on greenwashing to the European Commission by the end of May 2024.

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

Key Action Points

All Fund Management Companies should consider the contents of the Report and assess whether any changes need to be made to existing processes or investor-facing documentation in order to mitigate against the risk of engaging in greenwashing as described in the Report.

4.4 European Commission publishes Sustainable Finance Package

On 13 June 2023, the European Commission published a range of measures which are intended to “build on and strengthen the foundations of the EU sustainable finance framework”.

The measures announced by the European Commission include the following:

Adoption of new EU Taxonomy Delegated Acts by the European Commission

Following a consultation on draft delegated acts under the Taxonomy Regulation earlier this year, the European Commission announced the following:

- Adoption of delegated acts setting down the technical screening criteria which must be satisfied in order for an economic activity to be considered to make a substantial contribution to (i) sustainable use and protection of water and marine resources, (ii) transition to a circular economy, (iii) pollution prevention and control and (iv) protection and restoration of biodiversity and ecosystems, thus allowing new sectors and operators to show their Taxonomy alignment. A copy of the draft delegated acts and annexes thereto are available [here](#);
- Adoption of targeted amendments to the existing EU Taxonomy Climate Delegated Acts which 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 which are available [here](#); and
- Adoption of amendments to the existing EU Taxonomy Disclosures Delegated Acts which apply to entities falling within the scope of Article 8 of the Taxonomy Regulation to clarify the disclosure obligations for the additional activities.

Assuming that neither of the European Parliament or the Council of Europe object to the draft delegated acts adopted by the European Commission, they will enter into force and apply from January 2024.

Proposal for a Regulation on ESG Rating Providers

The European Commission also launched a consultation on a proposed regulation on the transparency and operations of ESG rating providers (**ESG Rating Providers Proposal**) which is intended to improve the quality of ESG ratings by (i) improving transparency of ESG ratings characteristics and methodologies 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 offering services to investors and companies in the EU should be authorised and supervised by ESMA.

The consultation process closes on 22 August 2023.

The draft ESG Rating Providers Proposal is available [here](#) with the related annexes thereto accessible [here](#).

Recommendation on Transition Finance

The European Commission also published a recommendation on facilitating finance for the transition to a sustainable economy (**Recommendation**).

The Recommendation is intended to provide guidance as well as practice examples to companies and the financial sector on how they can use the various tools of the EU sustainable finance framework voluntarily to channel the urgently needed investments into transition and manage their risks stemming from climate change and environmental degradation.

A copy of the Recommendation is available from [here](#). The annex to the Recommendation is available from [here](#).

Commission Notice on Interpretation and Implementation of certain legal provisions of the Taxonomy Regulation and links to the SFDR

As part of this package, the European Commission published a new FAQ document on the interactions between the concepts of 'taxonomy-aligned investment' and 'sustainable investment' under the SFDR.

In this document, the European Commission clarified that investments in 'environmentally sustainable economic activities' within the meaning of the EU Taxonomy can be qualified as a 'sustainable investment' within the meaning of the SFDR. This clarification intends to simplify and encourage the use of the taxonomy framework as a base for a common understanding of what environmental sustainability means in EU financial products and use of proceeds instruments.

A copy of the FAQ document is available [here](#)

Enhancement of the usability of the EU Taxonomy and the overall EU sustainable finance package

The European Commission also published a staff working document on the usability of the EU Taxonomy and the wider EU sustainable finance framework which it summarises the most recent measures and initiatives adopted by it to support stakeholders in their implementation efforts.

The European Commission has also launched a series of online tools and guides which are intended to help stakeholders when assessing and reporting their taxonomy alignment.

These documents and tools are now gathered on the new EU Taxonomy Navigator website which provides access to the following:

- EU Taxonomy Compass;
- EU Taxonomy Calculator;
- FAQs repository providing an overview of questions and answers on the EU Taxonomy and its delegated acts; and
- EU Taxonomy User Guide-a simple guide on the Taxonomy for non-experts.

The EU Taxonomy Navigator website can be accessed [here](#).

A copy of the European Commission's staff working document is available [here](#).

Details of the full package of measures announced by the European Commission are available [here](#)

4.5 Publication of Consolidated Q&A on the SFDR and the SFDR Delegated Regulation

The ESAs have published a consolidated Q&A containing all responses given by the European Commission on the SFDR and the SFDR Delegated Regulation (coded in blue) as well as all responses provided by the ESAs relating to the practical application or implication of SFDR (not colour coded) to date.

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

4.6 European Commission publishes draft delegated acts under the CSRD for consultation

On 12 June 2023, the European Commission launched a consultation on draft delegated acts containing the first set of sustainability reporting standards for large European companies and listed European companies under the Corporate Sustainability Reporting Directive

(CSRD), under which in-scope European companies will be required to report on their environmental and societal impact as well as about risks faced from climate change and other issues.

The first delegated act, which takes into account technical advice from the European Financial Reporting Advisory Group, sets out cross-cutting standards and standards for the disclosure of environmental, social and governance information.

The consultation closes on 7 July 2023 after which the European Commission will consider feedback received and then submit finalised delegated acts to the European Parliament and Council for scrutiny.

The CSRD will be effective for financial years starting on or after 1 January 2024 for those entities already subject to the Non-Financial Reporting Directive (reporting in 2025) and for financial years starting on or after 1 January 2025 for all other large companies (reporting in 2026).

A copy of the draft delegated acts being consulted on is available [here](#).

4.7 Provisional agreement reached on European Single Access Point

The Council of the European Union announced on 23 May 2023 that an agreement has been reached between it and the European Parliament on the creation of a European Single Access Point (ESAP) under which financial and sustainability-related information published by European companies, including small companies, will be made available to investors free of charge via a digital platform. ESAP will provide access to information already made public by in-scope companies under relevant European directives and regulations. Amongst other objectives, this is intended to facilitate ease of access for fund management companies and other financial market participants to sustainability-related information reported by in-scope European companies.

Under the provisional agreement, the ESAP platform is expected to be available from summer 2027 and gradually phased in to allow for a robust implementation.

The provisional agreement must be formally confirmed by the Council of Europe and the European Parliament before it can be formally adopted.

The Council of Europe's press release is available [here](#)

5. PRIIPs

5.1 European Commission proposes amendments to the PRIIPs Regulation

On 24 May 2023, the European Commission published its Retail Investment Strategy which proposes targeted changes to the PRIIPs Regulation⁶ which are intended to improve information for investors and their ability to take well-informed decisions as well as adapting disclosures to the digital environment.

The proposed changes to the PRIIPs Regulation and related implementing measures include (but are not limited to) the following:

- The inclusion of a new section in the PRIIPs KID entitled "How environmentally sustainable is this product?" which is intended to complement the existing EU sustainable finance disclosure framework;
- The inclusion of a new "dashboard" of key information on the first page of the PRIIPs KID which will provide information on the summary risk indicator, "total costs" figure and recommended holding period; and
- Introduction of other changes to adapt the PRIIPs KID to a digital environment.

⁶ Regulation (EU) 1286/2014 as amended

The legislative proposals put forward by the European Commission must now be considered by the European Parliament and the Council of Europe.

The proposed amendments to the PRIIPS Regulation are available [here](#).

For more information on the proposed amendments to the PRIIPS regulation, please see our Dillon Eustace briefing [here](#).

5.2 Publication of Consolidated FAQ on PRIIPS Regulation

On 17 May 2023, the ESAs published a consolidated Q&A containing all responses given by the European Commission on the PRIIPS Regulation (coded in blue) as well as all responses provided by the ESAs relating to the practical application or implication of the PRIIPS Regulation and its delegated acts to date (not colour coded).

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

6. MONEY MARKET FUNDS

6.1 ESMA Report on Stress Testing MMFs in the EU

On 6 June 2023, ESMA published the results of the stress tests conducted on EU money market funds (**MMF**) in accordance with the methodology and parameters included in ESMA's MMF stress testing guidelines for 2021 and reported to ESMA and national competent authorities at the end of 2021.

ESMA notes that the results of the stress testing conducted on MMF generally indicate a good resilience of the MMF industry to most market factors but also demonstrate that both liquidity and credit risk could have a detrimental impact on MMFs. ESMA notes that the evidence outlined in the report will inform future enhancements of the MMF stress testing framework later in 2023.

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

7. EXCHANGE TRADED FUNDS

7.1 IOSCO Publishes Final Report on ETF Good Practices

On 12 May 2023 IOSCO published its Final Report on ETF Good Practices (**Final Report**). This follows a consultation report issued by it in April 2022 (**Consultation Report**).

The Final Report is intended to build on its original 2013 report on Principles for the Regulation of Exchange Traded Funds and mirrors the measures that were proposed as part of the Consultation Report. It comprises 11 measures covering areas of effective product structuring, disclosure, liquidity and volatility control mechanisms.

For a detailed analysis of the Final Report, please access the DE briefing on the topic [here](#).

The Final Report can be accessed [here](#).

8. CROSS-BORDER DISTRIBUTION FRAMEWORK

8.1 Central Bank of Ireland publishes updated national provisions governing marketing requirements for AIFs

On 11 May 2023, the Central Bank updated its national provisions governing marketing requirements for AIFs.

The revised website guidance provides updated information on the format and content of marketing material and the Central Bank's approach to verification of marketing communications.

The updated provisions applicable to the marketing of AIFs in Ireland can be accessed [here](#).

9. ELTIF

9.1 ESMA publishes consultation paper containing draft delegated acts under the revised ELTIF Regulation

On 23 May 2023, ESMA released a consultation paper containing draft regulatory standards (**RTS**) prepared to give further effect under the revised ELTIF Regulation⁷ (**Consultation Paper**).

The draft RTS within the Consultation Paper set down ESMA's proposed provisions on certain elements of the ELTIF regime, including:

- Factors to consider in determining whether the life of an ELTIF is consistent with the life cycle of the ELTIF's underlying assets;
- Criteria to determine the minimum holding period for an ELTIF;
- Required elements to be included in the redemption policy of the ELTIF;
- Requirements in relation to the liquidity management tools to be utilised in order to allocate the cost of liquidity accordingly and protect remaining investors;
- The circumstances for the use of the matching mechanism; and
- The calculation methodologies for costs borne by investors, as well as the presentation of cost disclosures.

Responses to the Consultation Paper must be submitted to ESMA on or before 24 August 2023. ESMA expects to publish a final report and submit the draft RTS to the European Commission for its endorsement by 10 January 2024.

The Consultation Paper can be accessed [here](#).

A Dillon Eustace briefing on the Consultation Paper can be viewed [here](#).

10. EMIR & SFTR

10.1 Publication of ECB Opinion on EMIR 3.0 Proposal

On 7 December 2022, the European Commission published a package of proposals seeking to develop the EU's Capital Markets Union (**CMU**), including a proposal to amend Regulation (EU) No 648/2012 as amended (**EMIR**) seeking to make derivatives clearing in the EU more attractive. The proposal to amend EMIR is commonly referred to as "EMIR 3.0".

On 28 April 2023, the European Central Bank published its opinion on the EMIR 3.0 proposal (**Opinion**). The European Central Bank (**ECB**) makes a number of specific observations in the Opinion, a number of which are set out below:

- **Enhancing cooperation between authorities.** The ECB supports the proposed strengthening of cooperation among authorities at Union level and the expanded role for the ESMA in fostering supervisory convergence.
- **Updating prudential requirements for CCPs.** The ECB welcomes the proposal amending the admission requirements established by CCPs for clearing members. The ECB also supports the proposed amendments concerning margin requirements

⁷ Regulation (EU) 2015/760 as amended by Regulation (EU) 2023/606

as it recognises that passing through intraday margin calls could channel back liquidity to the clearing members. However, the ECB cautions that sometimes this practice may be impractical not only for CCPs but also for clearing members and their clients.

- **Collateral requirements.** The ECB cautions that the acceptance of uncollateralised commercial bank guarantees should remain a temporary regulatory measure applicable only to non-financial counterparties.
- **Reporting obligation.** The ECB strongly supports the proposal to remove the exemption from reporting requirements for intragroup transactions involving a non-financial counterparty.
- **Exemptions of intragroup transactions.** The ECB opposes the removal of equivalence as a pre-condition to availability of the intragroup exemption and its replacement with a third country "blacklist" regime.
- **Removal of supervisory validation of initial margin models.** The ECB objects to the proposal for the requirement for supervisory authorities to formally approve initial margin models. It proposes replacing a formal validation process with a general power of objection by competent authorities.
- **Active account requirement.** One of the most noteworthy elements of the EMIR 3.0 proposal is the requirement for EU market participants to clear a proportion of their transactions in certain derivatives at active accounts at EU CCPs thereby moving a significant proportion of euro derivatives trading to EU CCPs. The ECB proposes that ESMA should consider phase-in periods for the introduction of the active account requirement leaving suitable time for the progressive implementation of this requirement.
- **Reporting of compliance with the active account requirement.** The EMIR3.0 proposal requires counterparties to report annually on their compliance with the active account requirement. The ECB also proposes to increase the frequency of this reporting to a quarterly basis.

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

10.2 Publication of Updated List of Third-Country CCPs Recognised to Offer Services and Activities in the EEA

On 30 April 2023, ESMA updated their list of third-country central counterparties (**CCPs**) recognised to offer services and activities in the EEA under EMIR. The newly recognised TC-CCPs are:

- Bursa Malaysia Derivatives Clearing Berhad (Malaysia);
- Taiwan Futures Exchange Corporation (Taiwan);
- Cámara de Riesgo Central de Contraparte de Colombia S.A. (Colombia); and
- Tel-Aviv Stock Exchange Clearing House Ltd (Israel).

In addition, the revised list reflects the withdrawal of recognition of six TC-CCPs established in India

The updated list can be found [here](#).

10.3 Corrigendum to EMIR ITS

On 11 May 2023, the European Commission published a corrigendum to the Commission Regulation (EU) 2022/1860 containing the implementing technical standards (**New ITS**) setting out the EMIR reporting standards. The corrigendum corrects the ITS by inserting the date of 29 April 2024 as the date on which the ITS takes effect.

The corrigendum can be found [here](#).

A consolidated version of the implementing regulation can be found [here](#).

10.4 ISDA Comments on EMIR 3.0 Active Account Proposal

On 17 May 2023, ISDA published its comments on the EMIR 3.0 “**active account**” proposal.

The “active account proposal” refers to the proposal under EMIR 3.0 to require EU market participants to clear a proportion of their transactions in certain derivatives at active accounts at EU CCPs (Active Account Requirement), thereby moving a significant proportion of euro derivatives trading to EU CCPs.

ISDA pushes back on such proposals countering that the Active Account Requirement will not make the EU derivatives market safer or more attractive. ISDA states that “On the contrary, it will lead to market fragmentation – and fragmentation creates systemic and operational risks. The additional safeguards introduced in EMIR 2.2 in response to Brexit ensure that clearing on UK CCPs is safe and does not raise any financial stability risk.”

ISDA further argues that “Requiring EU market participants to clear a proportion of their business on EU CCPs will introduce additional costs, ultimately hurting European pension savers and investors and the EU economy. It will also make EU clearing members and clients less competitive than third-country firms.”

ISDA’s comments on the proposal can be found [here](#).

10.5 ESAs Publish Letter to EU institutions on Treatment of Equity Options

On 13 June 2023, the ESAs published a letter to the European Commission on the EMIR bilateral margining framework and equity options.

The ESAs refer to the Commission Delegated Regulation (EU) 2016/2251 setting out the regulatory technical standards (RTS) for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, as amended (**Bilateral Margin RTS**).

The Bilateral Margin RTS include a deferred date of application for non-centrally cleared OTC derivatives which are single-stock equity options or index options (equity options). This deferred date of application has been subsequently extended, together with an exemption for intragroup derivative contracts, and is currently set to expire on 4 January 2024.

In the letter the ESAs seek clarity from the European Commission and the co-legislators on what should be the applicable regime for equity options from 4 January 2024 onwards.

The ESAs letter to the European Commission can be accessed [here](#).

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

11.1 European Commission adds Nigeria and South Africa to List of High-Risk Countries

Under Article 9 of Directive (EU) 2015/849 (the **Fourth Anti-money Laundering Directive**), the European Commission is mandated to adopt and maintain a list of countries with strategic deficiencies in their anti-money laundering/countering the financing of terrorism regimes.

On 17 May 2023, the European Commission published a draft delegated regulation adding Nigeria and South Africa to its list of high-risk third countries and deleting Cambodia and Morocco from that list.

The delegated regulation will enter into force following its publication in the Official Journal and after the standard two-month scrutiny period by the European Parliament and the Council of Europe.

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

11.2 Changes to Right of Access to the Central Register of Beneficial Ownership of Companies

On 13 June 2023, the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) (Amendment) Regulations 2023 (**Amending Regulation**) became law in Ireland, restricting the access to the Central Register of Beneficial Ownership of Companies to those persons who have a “legitimate interest” in anti-money laundering and the countering of terrorism financing (**AML**).

The amending regulations are required on foot of the European Court’s decision in *Sovim*⁸ in November 2022. The Court found that a regime of general public access to companies’ beneficial ownership information constituted a “a serious interference with the fundamental rights to respect for private life and to the protection of personal data”.

Under the “legitimate interest requirement” the interested party must demonstrate to the Registrar of Beneficial Ownership of Companies and Industrial and Provident Societies that:

- The person is engaged in the prevention, detection or investigation of money laundering or terrorist financing offences,
- They are seeking to inspect the information for those purposes; and
- The relevant entity concerned is connected with persons convicted of an AML/CTF offence holds assets in a high-risk third country.

The Amending Regulations amend the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 (**Principal Regulation**).

The Principal Regulation can be found [here](#).

The Amending Regulation can be found [here](#).

12. DATA PROTECTION

12.1 EDPB Guidelines on Data Subject Right of Access

On 17 April 2023, the EDPB published a final version of the Guidelines 01/2022 on data subject rights - Right of access (the “**Guidelines**”). The updated version follows a public consultation on their draft guidelines published on 18 January 2022.

The Guidelines include consideration of:

- The aim of the right of access, the structure of Article 15 of GDPR and general principles;
- General considerations regarding the assessment of access requests;
- Scope of the right of access and the personal data and information to which it refers;
- Guidelines on how controllers can provide access;
- Limits and restrictions of the right of access; and
- A flowchart illustrating the process relevant firms should take in interpreting, assessing and processing a request.

The Guidelines are available [here](#).

⁸ The Sovim decision (C-37/20 and C-601/20)

12.2 European Parliament issues an Opinion rejecting the proposed EU-US Data Privacy Framework

On 11 May 2023, the European Parliament adopted a non-binding opinion concluding that the EU-U.S. data privacy framework proposed by the European Commission on 13 December 2022 (**EU-U.S. Data Privacy Framework**) fails to ensure an adequate level of protection for personal data transferred from the EU to US companies (**Opinion**).

The European Commission had previously proposed on 13 December 2022 that the EU-U.S. Data Privacy Framework, which was intended to replace the previous US Privacy Shield previously invalidated by the CJEU in the Schrems II case, would ensure equivalence in the level of protection between U.S. and EU Law.

In the Opinion, the European Parliament indicates that;

- It has taken note of the efforts made in the President of the United States' Executive Order 14086 of 7 October 2022 on Enhancing Safeguards for United States Signals Intelligence Activities (**EO 14086**) to lay down limits on US signals intelligence activities. However, the European Parliament voices its concerns in respect EO 1408, such as the failure to provide sufficient safeguards in the case of bulk data collection and the failure to provide clear rules on data retention.
- In respect of the principles of proportionality and necessity introduced by EO 14086, the substantive definitions in EO 14086 are not in line with their definition under EU law and their interpretation by the CJEU. The European Parliament also points out that for the purposes of the EU-US Data Privacy Framework, these principles would be interpreted solely in the light of US law and legal traditions and not those of the EU.
- In relation to the new Data Protection Court, the European Parliament calls out the inability of European citizens to seek effective judicial redress in the U.S. courts to the same extent as US citizens, the failure of the proposed redress process to provide for an avenue for appeal in a federal court and the failure to provide any possibility for of European citizens to claim damages and the lack of independence of the Data Protection Review Court.

The Opinion notes that the European Parliament believes that the EU-US Data Privacy Framework fails to create essential equivalence in the level of protection in the U.S, and it therefore calls on the European Commission to continue negotiations with its U.S. counterparts with the aim of creating a mechanism that would ensure such equivalence and which would provide the adequate level of protection required by Union data protection law. It has called on the European Commission not to adopt the adequacy finding until all the recommendations made in the Opinion and the EDPB opinion of 28 February 2023 are fully implemented.

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

12.3 EDPB adopts the final version of the Recommendations 1/2022 on the application for approval and on the elements and principles to be found in Controller Binding Corporate Rules together with a template complaint form

On 20 June 2023, the EDPB adopted its final version (version 2.0) of its Recommendations 1/2022 on the application for approval and on the elements and principles to be found in Controller Binding Corporate Rules (**Recommendations**).

The Recommendations build upon the agreements reached by data protection authorities in the course of approval procedures on concrete BCR applications since the entering into application of the GDPR. The recommendations provide additional guidance and aim to ensure a level playing field for all BCR applicants. The recommendations also bring the existing guidance in line with the requirements in the CJEU's Schrems II ruling.

The Recommendations indicate that the EDPB expects all new and ongoing BCR-C applicants to bring their BCR-C in line with the requirements set out below either during the application process or as part of their 2024 update.

The Recommendations are available [here](#).

In addition, on 20 June 2023, the EDPB adopted a template complaint form to facilitate the submission of complaints by individuals and the subsequent handling of complaints by Data Protection Authorities (**DPAs**) in cross-border cases. A copy of the template complaint form and the template acknowledgement of receipt can be accessed [here](#).

12.4 EDPB Promotes Consistent Approach for 101 NOYB Data Transfers Complaints

On 19 April 2023, the European Data Protection Board (**EDPB**) published a report of the work undertaken by supervisory authorities within the “101 Task Force”. This task force (**TF**) was initiated at a plenary meeting on 2 September 2020 to ensure a common supervisory approach to the 101 complaints made by non-profit organisation NOYB regarding transfers of personal data to the USA earlier in that year.

The complaints revolve around the implementation of the tools “Google Analytics” and “Facebook Business Tools” (“**tools**”) on a website and the subsequent processing of personal data that may follow because of such implementation.

The report details three main topics:

1. **Transfers of Personal Data:** Even if appropriate standard contractual clauses are used, additional measures must still be in place to address deficiencies identified in the Schrems II judgement. In this context, the TF members agreed that encryption by the data importer was not a suitable measure if the data importer, as provider of the tool, has legal obligations to provide the cryptographic keys. In addition, there was an agreement that anonymization functions, such as the anonymization of the IP address, are not a suitable measure where the anonymization takes place only after all the data has been transferred to the third country to the importer.
2. **Principle of Accountability:** The onus of compliance is not solely upon the website operators (as data controllers), but in certain instances also on respective “providers of tools” which enable the processing of data to a sufficient degree whereby they can be considered a controller, or a processor for the purposes of the assistance obligations under Article 28 GDPR
3. **Allocation of data protection roles:** The TF members agreed that the decision of a website operator to use a specific tool for specific purposes is regarded as determining the “purposes and means” pursuant to Article 4(7) GDPR (as relevant for identifying the data controller(s)).

The report is available [here](#).

13. CONFLICT IN UKRAINE

13.1 Adoption of eleventh package of sanctions against Russia by the European Union on 23 June 2023

In reaction to Russia’s continued military aggression against Ukraine, the European Union adopted additional economic sanctions against Russia which have been introduced through a suite of additional packages adopted by the Council of the European Union announced on 23 June 2023. This package included, amongst others, the following measures:

- an extension to the existing prohibition on the sale of investment funds which provide exposure to transferable securities denominated in any EU official currency to Russian investors⁹ to prohibit the sale of investment funds which provide exposure to transferable securities denominated in any other currency issued after 6 August 2023 to any such Russian investors¹⁰;
- an extension to the list of those individuals and entities subject to restrictive measures;
- introduction of a further criterion for the listing of natural or legal persons, entities or bodies subject to the asset freeze and the prohibition on making funds and economic resources available to designated persons and entities and amendment of an existing listing criteria;
- introduction of further derogations from the asset freeze and the prohibition on making funds and economic resources available to certain listed entities to allow for divestment from Russian companies and the disposal of certain types of securities held with specified listed entities; and
- additional provisions on information exchange and reporting.

For a complete overview of the additional measures introduced on 23 June 2023, please see the related press release which is available [here](#).

The Central Bank's webpage on sanctions reporting is accessible [here](#).

A consolidated version of the European Commission's frequently asked questions on the range of measures introduced in response to Russia's continued military aggression against Ukraine is available [here](#).

Key Action Points

If applicable, update internal procedures to ensure that Irish funds which may invest in transferable securities denominated in any currency are not made available to in-scope Russian investors and to ensure that sanctions screening lists have been updated in line with the extended list of designated persons subject to restrictive measures.

14. MISCELLANEOUS

14.1 Thematic assessment on embedding an effective conduct-focused culture in wholesale market

On 15 June 2023, the Central Bank published a report on a thematic assessment conducted regarding the approach taken by boards/senior management of wholesale market firms to foster and embed an effective conduct-focused culture. The firms within scope of the assessment carried out by the Central Bank included a range of investment firms, broker-dealers and fund service providers which engage in MiFID activities. The findings of the Central Bank will therefore be of direct relevance to Irish fund management companies with extended MiFID 'top-up' permissions.

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

- **Conduct-focused culture.** Firms are required to embed an effective conduct-focused culture that is underpinned by an effective conduct risk management framework which seeks to mitigate the market conduct risks to which a firm is exposed.
- **Role of Board and senior management.** The Central Bank suggests that Boards and senior management should "set the tone from the top". This involves making positive efforts to communicate the desired culture to the rest of the organisation.

⁹ Russian investors for this purpose includes any Russian national, any natural person residing in Russia or any legal person, entity or body established in Russia. This prohibition is disapplied where the investor in question is an EEA national or a Swiss national or has a temporary or permanent residence permit in an EEA Member State or Switzerland.

¹⁰ Russian investors for this purpose includes any Russian national, any natural person residing in Russia or any legal person, entity or body established in Russia. This prohibition is disapplied where the investor in question is an EEA national or a Swiss national or has a temporary or permanent residence permit in an EEA Member State or Switzerland.

- **Management Information.** The Central Bank suggests that Boards and senior management should be more proactive in ensuring timely and appropriate management (**MI**) information to ensure sufficient oversight of market conduct risk, noting that it found that MI information provided to the Board and senior management is “often deficient”.
- **Responsibilities for managing and mitigating market conduct risk.** The Central Bank expects firms to ensure the responsibilities of senior management to manage and mitigate market conduct risk are regularly communicated in the role profiles and objectives of senior management.
- **Hybrid-work.** With regard to hybrid-work, firms should proactively consider any mitigation measures or steps to take to ensure defined values and expected behaviours are being adhered to in a hybrid-working environment.
- **Speak-up culture.** The Central Bank expects senior management of firms to assess how they can encourage an inclusive “speak up culture”, making staff comfortable when raising concerns.

The report can be found [here](#).

14.2 Publication of MiCA and the recast Transfer of Funds Regulation

On 9 June 2023, Regulation (EU) 2023/1114 on markets in crypto assets (**MiCA**) and Regulation (EU) 2023/1113 on information accompanying transfers of funds and certain crypto-assets (the **Recast Funds Transfer Regulation**) were published in the Official Journal of the European Union.

The regulations will enter into force on 29 June 2023 giving effect to a new regulatory regime for crypto-assets across the European Union.

The Dillon Eustace briefing paper entitled “Regulation of crypto-assets becomes law provides further details and is available [here](#).”

14.3 ESAs launch consultation on first batch of DORA technical standards

On 19 June 2023, the ESAs published the first batch of policy mandates in respect of Articles 15, 16(3), 18(3), 28(9) and 28(10) of the [Digital Operational Resilience Act \(DORA\)](#).

Please refer to our Dillon Eustace briefing paper entitled “First Public Consultation on DORA standards launched” for further information which is available [here](#).

14.4 Provisional Agreement Reached on Financial Services Contracts Concluded at a Distance

On 6 June 2023, the Council of the EU and the European Parliament reached a provisional political agreement on the directive concerning financial services contracts concluded at a distance, repealing the existing Distance Marketing Directive and inserting its provisions into the Consumer Rights Directive once finalised.

The agreed text simplifies existing legislation, increases consumer protection and is intended to reduce unnecessary burden and create a level playing field for financial services concluded at a distance in order to encourage the cross-border provision of such services. It is also intended to improve the rules around information disclosure and aims to provide better protection for consumers in the digital environment. Under the agreed text, where the consumer concludes a contract using online tools (such as robo-advice or chatbots), the consumer will have the right to request human intervention in order to fully understand the effects of the contract on their financial situation. The agreed text also provides for a ‘withdrawal function’, which aims to ensure that to withdraw from a contract is not more burdensome than to enter it.

The provisional agreement must now be formally adopted by both the European Parliament and the Council of Europe before being published in the Official Journal of the EU.

The Council's press release on the matter can be accessed [here](#).

14.5 European Commission adopts draft Memorandum of Understanding with the United Kingdom

On 17 May 2023, the European Commission announced that it has adopted a draft Memorandum of Understanding (**MoU**) establishing a framework for structured regulatory cooperation in the area of financial services with the U.K.

The MoU, once signed by both Parties, will create the administrative framework for voluntary regulatory cooperation in the area of financial services between the EU and the UK. The MoU does not deal with the access of UK-based firms to the Single Market – or EU firms' access to the UK market - nor does it prejudice the adoption of equivalence decisions.

The draft MOU is subject to final political endorsement by the European Council, before it can be signed by the Commission on behalf of the EU.

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

14.6 Department of Finance Publishes Public Consultation on the Irish Funds Sector

On 21 June 2023, the Irish Department of Finance launched a public consultation on the Irish funds sector in which it seeks feedback from relevant stakeholders on a range of matters including the regulatory and supervisory framework, the impact of the funds sector and the taxation of investment products amongst others.

This follows the publication of the "Terms of Reference of the Funds Sector 2030 Review" in April 2023 which mandates the Irish Department of Finance to conduct a review of Ireland's funds sector.

The consultation closes on 15 September 2023 and will be followed by targeted stakeholder engagement in late 2023 and 2024. The Department of Finance is due to report to the Minister for Finance in summer 2024.

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

The full Terms of Reference can be accessed [here](#).

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 or your usual contact in the Dillon Eustace Asset Management and Investment Funds team

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