



## Investment Firms

# Quarterly Legal and Regulatory Update

Period covered: 1 April 2024 – 30 June 2024

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## 1. MIFID II

### 1.1 Central Bank publishes Guidance on the authorisation of MiFID firms

On 1 May 2024, the Central Bank of Ireland (**Central Bank**) published guidance documentation in relation to the authorisation process for a MiFID II investment firm in Ireland under the European Union (Markets in Financial Instruments) Regulations 2017 (**MiFID Regulations**).

The guidance comprises:

- Authorisation guidance note on completing an application form for authorisation as a MiFID investment firm (see [here](#));
- Authorisation guidance note for MiFID investment firms - preliminary meeting pre-application presentation (see [here](#)); and
- Authorisation guidance note for MiFID Investment Firms - key facts document (see [here](#)).

### 1.2 European Commission publishes Notice on transitional provision under MiFIR Amending Regulation

On 2 May 2024, the European Commission published a Notice on the recent regulation amending the Markets in Financial Instruments Regulation (**MiFIR**)<sup>1</sup> (the **MiFIR Amending Regulation**)<sup>2</sup> in the Official Journal of the EU (**OJ**).

In the Notice, the European Commission states that certain provisions in MiFIR provisions introduced by the MiFIR Amending Regulation must be supplemented by new or amended Commission delegated regulations to become fully operational and cannot be supplemented adequately by existing Commission delegated regulations. The Notice clarifies, in those cases, the existing delegated regulations continue to apply together with the MiFIR provisions that they supplement, as applicable before 28 March 2024.

The Notice contains further clarity in relation to Article 54(3) of MiFIR in relation to the following :

- The volume cap mechanism (Article 5 MiFIR);
- Deferred publication of the details of transactions in respect of bonds, structured finance products or emission allowances and deferred publication of the details of transactions in respect of derivatives (Articles 11 and 11a MiFIR);
- Obligation to make pre-trade and post-trade data available on a reasonable commercial basis (Article 13 MiFIR);
- Quotation rules for SIs in equity instruments (Article 14 MiFIR); and
- Obligation to report transactions (Article 26 MiFIR).

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

### 1.3 ESMA consults on draft technical standards relating to non-equity trade transparency, reasonable commercial basis and reference data under MiFIR

On 21 May 2024, the European Securities and Markets Authority (**ESMA**) published a consultation paper on proposed amendments to certain regulatory technical standards (**RTS**) on non-equity trade transparency, the availability of information on a reasonable commercial basis (**RCB**) and reference data under the recent MiFIR Amending Regulation.

The technical standards relate to:

<sup>1</sup> Markets in Financial Instruments Regulation (EU) No. 600/2014 (MiFIR).

<sup>2</sup> Regulation (EU) 2024/791 of the European Parliament and of the Council (the MiFIR amending Regulation or MiFIR 2)

- Pre- and post-trade transparency requirements for non-equity instruments (bonds, structured finance products and emissions and allowances). These reflect revised mandates in Articles 9(5), 11(4), 11(5) and 21(5) of the recent MiFIR Amending Regulation;
- The obligation to make pre-and post-trade data available on a RCB which seeks to ensure that market data is available to data users in an accessible, fair, and non-discriminatory manner. This reflects the mandate under Article 13 of the MiFIR Amending Regulation; and
- The requirements relating to the supply of reference data that is fit for both transaction reporting and transparency purposes under Article 27 of the MiFIR Amending Regulation.

Please see a copy of our earlier DE briefing paper on the MiFID II amending Directive and the MiFIR Amending Regulation for further details which is available [here](#).

Comments can be made on the consultation paper until 23 August 2024. ESMA intends to publish a final report and submit the draft technical standards to the European Commission by the end of Q4 2024.

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

#### 1.4 ESMA consults on draft technical standards relating to commodity derivatives technical standards under MiFID II

On 23 May 2024, ESMA published a consultation paper on proposed amendments to certain technical standards for commodity derivatives under the Directive amending the MiFID II Directive<sup>3</sup> (the **MIFID Amending Directive**)<sup>4</sup>.

The MiFID II Amending Directive introduces changes to some of the MiFID II Directive provisions regarding commodity derivatives. In particular, the revised Article 57 of the MiFID II Directive extends position management controls to trading venues that trade derivatives on emission allowances and the revised Article 58 of the MiFID II Directive amends the scope of position reporting by excluding emission allowances and introduces a new obligation to report two weekly positions reports, one of which excludes options.

These changes require the revision of:

- The RTS and implementing technical standards (**ITS**) on position management controls<sup>5,6</sup>; and
- Article 83 of MiFID II Delegated Regulation covering organisational requirements and operating conditions for investment Firms<sup>7</sup> which concerns position reporting.

Member States will have until 29 September 2025 to transpose the MiFID II Amending Directive.

Comments can be made on the consultation paper until 23 August 2024. Based on the responses and feedback it receives, ESMA will then submit a final report to the Commission.

A copy of the ESMA consultation paper can be viewed [here](#).

#### 1.5 ESMA consults on draft technical standards relating to consolidated tape providers and data reporting service providers under MiFIR

On 23 May 2024, ESMA published a consultation paper on proposed amendments to certain technical standards for under the recent MiFIR Amending Regulation amending MiFIR. The technical standards relate to consolidated tape providers (**CTPs**), other data reporting service providers (**DRSPs**) and the assessment criteria for the CTP selection procedure.

<sup>3</sup> Directive (EU) 2014/65

<sup>4</sup> Directive (EU) 2024/790

<sup>5</sup> Commission Delegated Regulation (EU) 2022/1299

<sup>6</sup> Commission Delegated Regulation (EU) 2017/1093

<sup>7</sup> Commission Delegated Regulation (EU) 2017/565.

Comments can be made on the consultation paper until 28 August 2024. Based on the responses it receives, ESMA will prepare a final report and submit the final technical standards to the European Commission by the legislative deadline of 29 December 2024.

ESMA will also publish a feedback statement on the specification of the assessment criteria for the CTP selection procedure by the end of 2024.

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

## 1.6 ESMA publishes statement on use of AI in provision of retail investment services

On 30 May 2024, ESMA published a public statement on the use of Artificial Intelligence (**AI**) in the provision of retail investment services.

The statement provides guidance to investment firms using AI, in light of their key obligations under the MiFID II Directive and MiFIR in light of their key obligations under MiFID II and to emphasise the imperative to always prioritise clients' best interest. ESMA highlights that whilst AI holds promise in enhancing investment strategies and client services, it also presents inherent risks, including algorithmic biases, data quality issues, and (potential) lack of transparency.

The statement concludes that the use of AI in investment services presents opportunities and challenges. ESMA aims to help firms ensure they harness the potential of AI while safeguarding investors' confidence and protection. ESMA and the national competent authorities (**NCAs**), will monitor the evolution of AI and EU legal framework to determine if further action is needed.

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

## 1.7 ESMA publishes report on 2023 Common Supervisory Action and Mystery Shopping Exercise on MiFID II marketing requirements

On 27 May 2024, ESMA published a report on the results of its 2023 common supervisory action (**CSA**) and mystery shopping exercise (**MSE**) on the application of the disclosure rules on marketing communications under the MiFID II Directive.

Pursuant to a 2023 CSA, national competent authorities (**NCAs**) were asked by ESMA to assess firms' organisation and procedures for marketing communications, including their procedures concerning sustainability and the use of third parties. ESMA assessed the contents of firms' marketing communications, including advertisements to clients and their compliance with MiFID II requirements. The CSA and MSE were used for the purpose of gathering evidence on the topic of greenwashing.

The report sets out ESMA's views on each of the topics considered and the activities reported to it, including:

- processes and procedures of MiFID firms relating to sustainability;
- requirements regarding the presentation of information on sustainability issues in marketing materials which should be provided in a fair, clear and not misleading manner;
- whether firms were promoting themselves as "sustainable" or mentioning in the marketing communications their adherence to voluntary ESG or net zero alliances or to reporting initiatives; and
- types of marketing communications including advertisements used and the presentation and accessibility thereto.

ESMA identifies several areas of improvements, such as the need for marketing communications to be clearly identifiable and to contain a clear presentation of risks and benefits. The report also states, where products and services are marketed as having "zero cost", they should also include references to any additional fees.

ESMA will continue liaising with NCAs on the issue of marketing communications and on their follow-up actions. It will assess whether there is a need to use supervisory convergence tools to build a stronger supervisory culture across the EU and to promote effective and consistent supervision with regard to marketing communications, including advertisements.

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

## 1.8 European Commission consults on draft Delegated Regulation concerning OTC derivatives identifying reference data under MiFIR

On 12 June 2024, the European Commission published for consultation a draft Delegated Regulation concerning OTC derivatives identifying reference data under MiFIR. The draft Annex has been published separately.

The draft Delegated Regulation provides the full set of relevant identifying reference data that need to be assigned to a given ISO 6166 International Securities Identifying Number (**ISIN**) for OTC interest rate swaps and OTC credit default swaps.

Among other things, the draft Delegated Regulation includes a deferred date of application, to allow enough time for revising the ISIN template and implementing the necessary adjustments to IT systems, while taking into consideration the timeline prescribed by the MiFIR review for launch of the OTC derivatives consolidate tape tender process.

The draft states that it will enter into force 20 days after publication in the OJ and will apply from 1 September 2025.

Both the text of the draft Delegated Regulation and the accompanying Annex can be accessed [here](#).

## 1.9 Council of EU adopts its negotiating position on Retail Investment Strategy

As part of its EU 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>8</sup>, the Insurance Distribution Directive (**IDD**)<sup>9</sup>, the UCITS Directive<sup>10</sup>, AIFMD<sup>11</sup> and the Solvency II Directive<sup>12</sup> by way of an omnibus directive.

On 12 June 2024, the Council confirmed that it had finalised its position on the EU Retail Investment Strategy meaning that negotiations with the European Parliament, which approved its negotiating mandate on the draft proposals in April 2024, can now begin.

The Council has proposed a number of changes to the proposals relating to undue costs put forward by the European Commission. In particular, it has proposed that instead of in-scope product manufacturers and product distributors being required to use peer benchmarks in their product governance processes to assess whether the proposed costs structure is appropriate as had been proposed by the European Commission, ESMA and the European Insurance and Occupational Pensions Authority (**EIOPA**) should develop Union supervisory benchmarks which should be used by national competent authorities as a supervisory tool to assess whether investment products fail to offer value for money. However, such product manufacturers and distributors will be required to compare their investment products to a peer group of other similar investment products in the EU to determine that the product offers value for money, using information contained in databases managed by ESMA and EIOPA.

The Council has also proposed removing the ban on inducements received for execution-only sales put forward by the European Commission in its original proposals subject to other enhancements being made to existing inducement rules.

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

<sup>8</sup> Directive 2014/65/EU

<sup>9</sup> Directive 2016/97

<sup>10</sup> Directive 2009/65/EC

<sup>11</sup> Directive 2011/61/EU

<sup>12</sup> Directive 2009/138/EC

## 2. INVESTMENT FIRMS REGULATION AND INVESTMENT FIRMS DIRECTIVE

### 2.1 ESMA and EBA publish Call for Advice on the EU Investment Firms Prudential Framework

On 3 June 2024, the European Banking Authority (**EBA**) jointly with ESMA published a call for advice seeking feedback from interested stakeholders on certain aspects of the existing EU investment firm prudential framework which comprises the Investment Firms Regulation (**IFR**)<sup>13</sup> and the Investment Firms Directive (**IFD**)<sup>14</sup> (**Call for Advice**).

Responses received to the Call for Advice will be used to inform a report that the EBA and ESMA will provide to the European Commission on the existing framework in December 2024.

The Call for Advice seeks views on certain elements including:

- **Categorisation of investment firms:** The EBA analyses provisions concerning investment firms that are required to apply the Capital Requirements Regulation (**CRR**)<sup>15</sup> without being authorised as credit institutions and those investment firms that qualify as small and non-interconnected;
- **K-factors:** The EBA is considering revising the existing K-factor framework to cover risks currently only addressed under the Pillar 2 framework or as possible alternatives to existing K-factors;
- **Other regulations:** The EBA considers investment firms' exposures to crypto assets and the provision of services related to crypto assets, the role of other providers of financial services, the interaction with the own funds requirements applicable to alternative investment fund managers (**AIFMs**) and UCITS management companies providing ancillary MiFID services; and
- **Remuneration:** The EBA considers the existing remuneration regime for investment firms, AIFMs and UCITS management companies, including the scope of application, remuneration policies and the variable remuneration.

The deadline for responses is 3 September 2024.

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

### 2.2 RTS on details of scope and methods for prudential consolidation of an investment firm group under IFR published in OJ

On 25 June 2024, a Delegated Regulation<sup>16</sup> containing RTS specifying the details of the scope and methods for prudential consolidation of an investment firm group under the IFR was published in the OJ.

The RTS contain provisions on the following issues under an empowerment in Article 7(5) of the IFR:

- The scope of consolidation;
- The methods of consolidation;
- The methodology for the calculation of the own funds requirements in a consolidated situation; and
- The rules applicable for minority interest and additional Tier 1 and Tier 2 instruments issued by subsidiaries in the context of prudential consolidation.

The Delegated Regulation will enter into force on 15 July 2024, 20 days after publication in the OJ.

The Commission had adopted the Delegated Regulation in March 2024.

<sup>13</sup> Regulation (EU) 2019/2033 of the European Parliament and of the Council.

<sup>14</sup> Directive (EU) 2019/2034 of the European Parliament and of the Council.

<sup>15</sup> Regulation (EU) 575/2013 of the European Parliament and of the Council.

<sup>16</sup> Commission Delegated Regulation (EU) 2024/1771.

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

### 3. EMIR & SFTR

#### 3.1 ESMA follow-up report on EMIR Data Quality Peer Review

On 11 April 2024, ESMA published a follow-up report to its peer review into supervisory actions with the aim of enhancing the quality of data reported under EMIR<sup>17</sup> (**ESMA Follow-up Report**).

In the Report, ESMA considers the work undertaken by NCAs in Cyprus, France, Germany, Ireland and the Netherlands, as well as by itself, to address issues raised in ESMA's previous peer review published in 2019<sup>18</sup>. This included the use of frameworks and methodologies, thematic reviews, on and off-site investigations, discussion with firms' executives and stakeholders, the roll out of monitoring tools and dashboards, and regular monitoring and structured follow-up on detected significant data quality issues.

ESMA concludes this work has forged a path to continue strengthening the regime and increasing the quality of data, although it emphasises that data quality will remain a key area of attention for supervision. ESMA highlights that ensuring data quality remains a primary duty of supervised entities. Senior management are expected to take ownership of the data they report and increase its use for internal purposes.

The ESMA Follow-up Report can be found [here](#).

#### 3.2 European Parliament adopts proposed EMIR 3.0

On 25 April 2024, the European Parliament published a press release announcing that it had voted in plenary to adopt the proposed Regulation amending EMIR seeking to make derivatives clearing in the EU more attractive (**EMIR 3.0**). It has also adopted the proposed Directive making targeted related amendments to the UCITS Directive, the CRD IV Directive and the Investment Firms Directive<sup>19</sup> to ensure that the EMIR 3.0 reforms are fully implemented and consistent with existing legislation.

The adopted texts reflect the provisional agreement reached with the Council of the EU in February 2024. Please see the earlier Dillon Eustace briefing paper on this topic which available [here](#).

The next step is for the Council of the EU to formally adopt the finalised texts and thereafter the Regulation and the Directive will be published in the Official Journal of the EU. It is anticipated that such measures are likely enter into force in the final quarter of this year. However certain technical standards are required to complement the new rules and the timing for these are uncertain.

The adopted text for the proposed EMIR Regulation is available [here](#). The adopted text for the proposed EMIR Directive is available [here](#).

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

### 4. CENTRAL BANK OF IRELAND

#### 4.1 Central Bank's Individual Accountability Framework

On 12 April 2024, the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Senior Executive Accountability Regime) Regulations 2024 (**SEAR Regulations**) were signed into law by the Governor of the Central Bank.

<sup>17</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories as amended

<sup>18</sup> The ESMA 2019 peer review into supervisory actions aiming at enhancing the quality of data reported under EMIR (17 October 2019) (ESMA42-111-4895)

<sup>19</sup> Directive (2009/65/EC) as amended (**UCITS Directive**), Directive 2013/36/EU (**CRD IV**) Directive (EU) 2019/2034 (**Investment Firms Directive** or **IFD**)



SEAR is the last of the four pillars of the Central Bank's Individual Accountability Framework to be implemented when the SEAR Regulations came into operation on 1 July 2024 with the exception of provisions relating to non-executive directors which apply from 1 July 2025.

SEAR applies to all Irish-regulated credit institutions and insurance companies and certain MiFID firms.

In order to support in-scope firms with their implementation of SEAR, in July 2024 the Central Bank published questions from stakeholders to provide responses to queries received to-date (**SEAR Q&A**).

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

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

## 4.2 Industry Letter – Thematic Review of Compliance with the Minimum Competency Code and Consumer Protection Code

On 29 May 2024, The Central Bank of Ireland (**Central Bank**) an industry letter following on from the Central Bank's thematic review which examined the compliance of retail intermediaries with the Minimum Competency Code (**MCC**)<sup>20</sup>, knowing the customer (**KYC**) requirements and suitability requirements set out in the Consumer Protection Code (**CPC**)<sup>21</sup>.

The thematic review focussed on insurance and investment intermediaries in particular on retail intermediaries selling products where poor standards of compliance could result in significant consumer detriment, such as life and investment products. The letter provides feedback to industry on the findings of the review such as KYC and suitability weaknesses, minimum competency gaps, lack of or inadequate variable remuneration policies and the identification and subsequent processes around vulnerable customers.

In light of the findings, the Central Bank requests all retail intermediaries to undertake the actions set out in the letter. Such actions include the review by such firms of their business practices and compliance arrangements against the findings, expectations and good practices set out in the industry letter by 31 August 2024. This review and its outcomes must be documented.

The findings set out in the industry letter are not exhaustive and the Central Bank reminds retail intermediaries of their obligations to comply with all relevant requirements of the MCC and the CPC.

The Central Bank's industry letter can be viewed [here](#).

## 4.3 Central Bank publishes Feedback Statement in response to the Consultation on Innovation Engagement on Financial Services

On 4 June 2024, the Central Bank confirmed that it will establish an Innovation Sandbox Programme later this year. The programme will aim to provide regulatory advice and support for innovative projects that promote better outcomes for society and financial systems.

The decision to proceed with the Innovation Sandbox Programme comes after a public consultation which ran from November 2023 to February 2024. Whilst stakeholders were supportive of the establishment of the Innovation Sandbox Programme, there were several constructive recommendations for improvement made and requests for clarity on its operation. The Central Bank made some changes to the proposed approach, namely:

- Increasing the duration of the Sandbox Programme; and
- Removing the original proposal to operate the sandbox in conjunction with a third party.

<sup>20</sup> Minimum Competency Code 2017 issued by the Central Bank

<sup>21</sup> The Consumer Protection Code 2012 and all addenda and supplements thereto, issued by the Central Bank and which is now under review.



- Given the predominantly EU-basis of most regulatory requirements and the importance of protecting consumers interests, the Central Bank does not propose to provide derogations or waivers from regulation. The sandbox will apply the regulatory framework proportionally, with an outcome focused, risk-based approach.

This proposal is part of the Central Bank's strategy to transform its approach to regulation and supervision. It is envisaged by the Central Bank that it will help foster innovation in financial services, supporting better outcomes consistent with its public policy objectives. Additionally, it is hoped it will help firms to build safeguards into their early-stage development, embedding a regulatory culture to ensure they are properly prepared for the responsibilities that come as regulated firms.

The press release from the Central Bank on the Innovation Sandbox Programme can be accessed [here](#).

The feedback from the Central Bank in response to the public consultation can be viewed [here](#).

#### 4.4 Addendum to the Minimum Competency Code

On 19 June 2024, the Central Bank amended the competencies for retail financial products in Appendix 3 of MCC to include competencies relating to sustainability for all retail financial products. There are also MCC amendments to incorporate the suitability requirements under the MiFID II Directive and Insurance Distribution Directive (IDD)<sup>22</sup>.

These amendments follow from a Notice of Intention issued by the Central Bank in November 2023 to recognize sustainability knowledge and competence in the MCC with effect from 1 January 2025.

The Central Bank also recognises sustainability training for Continuing Professional Development (CPD) hours, where it is directly relevant to a person's role.

- Part 1 of the Addendum sets out the amendments to recognise sustainability knowledge and competence for the purposes of the MCC.
- Part 2 of the Addendum sets out amendments made by the Central Bank to update references in the MCC. These part 2 amendments primarily relate to legislative changes, updating legislation references and changes to the name of some agencies.

The Addendum is effective for anyone selling or providing advice on financial products or services that incorporate a sustainability element from 1 January 2025.

A copy of the Addendum to the MCC can be accessed [here](#).

#### 4.5 Central Bank publishes Questions and Answers from Stakeholders on its Individual Accountability Framework

On 1 July 2024, the Central Bank published "Questions from Stakeholders" to provide responses to queries from industry that it has received to date on its Individual Accountability Framework (IAF).

The Questions from Stakeholders relating to the Central Bank's conduct standards introduced under the IAF will be of relevance to Irish fund management companies and Irish domiciled investment funds and address the following matters:

- The application of the conduct standards to individuals in controlled function (CF) roles providing services on a freedom of services basis; and
- The extent to which individuals in group entities can be considered to exercise a significant influence on the conduct of a subsidiary/related RFSP's affairs and consequently be subject to the additional conduct standards applicable to CF-1 role-holders.
- The delivery of training on the IAF conduct standards where roles have been outsourced.

<sup>22</sup> Directive (EU) 2016/97

A copy of the Questions from Stakeholders can be accessed [here](#).

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

### 5.1 AML Regulation, AMLA Regulation and MLD6

#### *AML Regulation:*

On 19 June 2024, the regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing<sup>23</sup> (**AML Regulation**) was published in the Official Journal of the EU. The AML Regulation will apply from 10 July 2027.

Amongst other initiatives, the AML Regulation shall:

- the AML rules to the entire crypto sector, obliging crypto-asset service providers (**CASPs**) to conduct CDD on their customers for any transactions over 1,000 EUR;
- ensure that large transactions are not used for ML/TF by limiting large cash payments to a maximum EU-wide limit of 10,000 EUR;
- clarify beneficial ownership rules to allow for more transparency and harmonisation across the EU. Both ownership and control needs to be assessed to identify natural persons. The beneficial ownership threshold will currently stay at 25%. However, adopting a risk-based approach, Member States can identify categories of corporate entities exposed to higher ML/TF risks, and propose a lower threshold to the Commission provided that such lower threshold shall however not be lower than 15%. The Council has clarified rules applicable to multi-layered ownership and control structures and for the identification of beneficial owners for different types of entities, including non-EU entities;
- new rules on carrying out enhanced due diligence obligations (**EDD**) in certain specified circumstances and a requirement that designated entities will have to conduct EDD measures for occasional transactions and business relationships involving high-risk third countries, based on an assessment to be conducted considering the lists drawn up by FATF; and
- new rules concerning customer due diligence, reporting obligations and record-retention measures.

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

#### *AMLA Regulation:*

On 19 June 2024, the Regulation establishing the Anti-Money Laundering Authority<sup>24</sup> was published in the OJ. The AMLA Regulation will enter into force on the twentieth day following its publication and will apply from 1 July 2025. The Anti-Money Laundering Authority (**AMLA**) shall start direct supervision of selected obliged entities (**SOEs**) in 2028. The seat of will AMLA has been announced as Frankfurt am Main (Germany).

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

<sup>23</sup> Regulation (EU) 2024/1624 of the European Parliament and of the Council of 31 May 2024 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

<sup>24</sup> Regulation (EU) 2024/1620 of the European Parliament and of the Council of 31 May 2024 establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism and amending Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010

## MLD6

On 19 June 2024, the Sixth Money Laundering Directive<sup>25</sup> (**MLD6**) was published in the Official Journal. MLD6 will address beneficial ownership information including the requirement for the information submitted to the central register to be verified, the management of the framework relating to bank account registries, the requirement for a single access point to information on real estate, expansion of the powers and role of FIUs, the potential to bring additional sectors into the scope of the 'single rulebook', carrying out national risk assessments, and the on-going role of competent authorities.

Member States must transpose the directive into national law by 10 July 2027. However, there are a number of exceptions including:

- certain provisions relating to access to the central registers of beneficial ownership of corporates and trusts and related provisions must be transposed earlier by 10 July 2026.
- provisions relating to the requirement for a single access point to information on real estate must be transposed by 10 July 2029.

A copy of MLD6 is available [here](#).

## 6. PRIIPs

### 6.1 Council of European Union approves negotiating mandate on revisions to the 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<sup>26</sup>.

On 12 June 2024, the Council of the European Union (**Council**) confirmed that it had reached agreement on its negotiating mandate on the proposed reforms to the PRIIPS Regulation.

This follows the agreement reached by the European Parliament on its negotiating mandate on proposed amendments to the PRIIPS Regulation on 11 May 2024, meaning that inter-institutional negotiations on the revisions to the PRIIPS Regulation can now begin.

A copy of the negotiating mandate agreed by the Council 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](#).

## 7. SUSTAINABILITY

### 7.1 ESMA publishes Final Report on Greenwashing

On 4 June 2024, ESMA published its Final Report on Greenwashing (**Final Report**) in response to a request from the European Commission to the European Supervisory Authorities (**ESAs**)<sup>27</sup> for their input on greenwashing risks and the supervision of sustainable finance policies.

This follows the publication of ESMA's Progress Report on Greenwashing in May 2023 which set the ESAs common high-level understanding of the term "greenwashing" and which identified specific areas across the financial sectors which were particularly exposed

<sup>25</sup> Directive (EU) 2024/1640 of the European Parliament and of the Council of 31 May 2024 on the mechanisms to be put in place by Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Directive (EU) 2019/1937, and amending and repealing Directive (EU) 2015/849

<sup>26</sup> Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products

<sup>27</sup> The ESAs are the EBA, EIOPA and ESMA

to greenwashing risks and the drivers of such risks (**Progress Report**). The Progress Report also set down recommendations to market participants, including the investment management sector, on how such risks can be mitigated.

In the Final Report, ESMA re-confirms the ESA's common understanding of the term "greenwashing" and the recommendations made to market participants outlined in the Progress Report.

The Final Report focuses primarily on the role that the European Commission, ESMA itself and each of the NCAs play in supervising and mitigating greenwashing risk in the financial sector.

In it, ESMA sets out actions which each of these should take in order to enhance supervision of greenwashing risk in the financial sector, including both general recommendations and sector-specific recommendations.

Of specific relevance to investment firms and credit institutions providing investment services (hereinafter "investment service providers"), the Final Report indicates that:

- NCAs are invited to consider minimum requirements for ESG knowledge and competencies of financial advisors;
- NCAs are invited to dedicate resources and develop initiatives to increase retail investors' financial literacy with regards to sustainable products and investments;
- NCAs are invited to complement their assessment of ESG information disclosed or provided by investment service providers with the analysis of third parties and external verifiers, where needed; and
- ESMA will launch a CSA89 on the integration of sustainability in firms' suitability assessment and product governance processes and procedures in 2024.

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

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

## 7.2 ESAs publish Joint Opinion on the SFDR

On 18 June 2024, the ESAs published a joint opinion on the SFDR<sup>28</sup> (**Opinion**) in which they put forward a number of proposals on how the SFDR should be reformed.

This follows a European Commission consultation on the SFDR which closed in December 2023 in which the European Commission sought feedback on the operation of the SFDR and put forward a number of alternative proposals to revising the framework to make it more fit for purpose, including the possibility of introducing a formal product categorisation regime.

While reforms to the SFDR will likely take a number of years to implement, the proposals put forward by the ESAs in the Opinion provide an insight as to what form the revised SFDR framework might take.

The recommendations put forward by the ESAs in their Opinion include:

### *Introduction of a product categorisation regime*

The ESAs have suggested that the Commission could consider the introduction of a product classification system, based on regulatory categories and / or sustainability indicator(s) to help consumers navigate the broad selection of sustainable products and support the full transition to sustainable finance.

<sup>28</sup> Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector

They have suggested that such regime should “as a starting point” include at least two categories, namely a “sustainable product” and a “transition” product each of which will be subject to specific disclosure obligations relevant to the category.

- Sustainable products: products that invest in economic activities/ assets that are already environmentally and/or socially sustainable; and
- Transition products: products that invest in economic activities/ assets that are not yet sustainable, but which improve their sustainability over time to become environmentally or socially sustainable.

#### *Introduction of a sustainability indicator regime*

The ESAs have also suggested that a “sustainability indicator” regime for all financial products could be introduced which could either operate: (i) instead of the product categorisation regime outlined above: or (ii) in addition to the product categorisation regime above where a product could qualify for a category (if relevant criteria was met) as well as being awarded a sustainability indicator grade.

This indicator would indicate the sustainability features of the product using a scale with products being required to satisfy clear and objective criteria in order to obtain a specific rating. The ESAs have proposed a range of alternative options for such a sustainability indicator, including a grading scale referring to letters or colours.

#### *Other proposals*

- The ESAs have recommended that the key parameters of the “sustainable investment” definition under the SFDR should be revised to be made more prescriptive. They have proposed that if an economic activity is Taxonomy-eligible (i.e. covered by the EU Taxonomy), it should only be considered a “sustainable investment” if it meets the relevant technical screening criteria. If an economic activity is not covered by the EU Taxonomy framework (i.e. not taxonomy-eligible as not currently covered by the EU Taxonomy), appropriate metrics and minimum requirements under the SFDR should be complied with. The ESAs note that this could include relying on existing PAI indicators, DNSH and good governance requirements under the SFDR.
- They have also suggested that the European Commission consider whether all financial products, including those which make no sustainability claims, should disclose some “information” on adverse impacts so that investors have a clearer picture about the negative consequences of potential investments.
- Pre-contractual disclosures provided to investors should be tailored depending on the type of investor with only key information being disclosed to retail investors while more comprehensive information should be made available and disclosed to professional investors.

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

### 7.3 ESG Round-Up

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

On 8 May 2024, the Directive<sup>29</sup> amending Directive 2013/34/EU (**Amending Directive**) was published in the OJ.

The Amending Directive postpones the deadline for entities falling within the scope of the CSRD<sup>30</sup> to adopt sector-specific European sustainability reporting standards under the CSRD framework by two years until 30 June 2026. Under the Amending Directive, the

<sup>29</sup> Directive (EU) 2024/1306

<sup>30</sup> Corporate Sustainability Reporting Directive (CSRD) - 2022/2464/EU

European Commission is required to adopt such delegated acts as soon as each is ready in order to provide in-scope entities with sufficient time to prepare for implementation of those sector-specific reporting requirements.

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 European Sustainability Reporting Standards (**ESRS**).

The Amending Directive also postpones the adoption of general sustainability reporting standards for in-scope third-country undertakings until 30 June 2026. As already provided for under the CSRD, the first of those in-scope third country undertakings will be required to report under the CSRD for the first time in 2028.

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

### *EU Platform on Sustainable Finance*

On 4 April 2024, the EU Platform on Sustainable Finance published an intermediate report on monitoring capital flows to sustainable investments (**Report**).

The Report provides information on the work carried out by the EU Platform for Sustainable Finance on monitoring the extent to which capital flows are actually being redirected towards sustainable investments, and then assessing overall progress towards the objectives of the European Green Deal. It is intended to provide insights on whether: (i) sustainable finance policy has been sufficiently mainstreamed in financing and investment strategies of financial firms, (ii) the necessary investments to transform the EU economy are happening in the real economy; and (iii) relevant entities have access to finance for sustainable investments.

The EU Platform on Sustainable Finance will release a final report at the end of its current mandate.

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

### *EFRAG publishes technical explanations on ESRS Sustainability Reporting Standards under the CSRD.*

On 30 May 2024, the European Financial Reporting Advisory Group (**EFRAG**) released a new set of technical explanations provided to assist stakeholders in the implementation of the ESRS.

This set of explanations comprises 44 new technical explanations provided in response to questions received by EFRAG as well as 12 Explanations previously released on 5 February 2024 and 12 Explanations previously released on 1 March 2024.

A copy of the set of technical set of explanations is available [here](#).

## **8. MISCELLANEOUS**

### **8.1 DORA Commission Delegated Regulations published in the Official Journal**

On 30 May 2024, the following Commission Delegated Regulations supplementing DORA were published in the OJ:

- Commission Delegated Regulation (EU) 2024/1502 supplementing DORA by specifying the criteria for the designation of ICT third-party service providers as critical for financial entities, accessible [here](#); and
- Commission Delegated Regulation (EU) 2024/1505 supplementing DORA by determining the amount of fees to be charged by the lead overseer to critical providers and the way fees are to be paid, accessible [here](#).

On 25 June 2024, the following Commission Delegated Regulations were published in the OJ;

- Commission Delegated Regulation (EU) 2024/1772 setting out RTS specifying the criteria for the classification of ICT-related incidents and cyber threats, setting out materiality thresholds and specifying the details of reports of major incidents, accessible [here](#).
- Commission Delegated Regulation (EU) 2024/1773 setting out RTS specifying the detailed content of the policy regarding contractual arrangements on the use of ICT services supporting critical or important functions provided by ICT third-party service providers, accessible [here](#).
- Commission Delegated Regulation (EU) 2024/1774 setting out RTS specifying ICT risk management tools, methods, processes and policies and the simplified ICT risk management framework, accessible [here](#).

Each of the above Commission Delegated Regulations entered into force 20 days after publication in the OJ. DORA has an implementation date of 17 January 2025.

## 8.2 ESMA publishes Position Paper on Capital Markets Union

Ahead of the European parliamentary elections which were held in June 2024, a number of European institutions, including the European Council, called for a strengthening of the existing EU capital markets in light of urgent financing needs and an identified need to improve the competitiveness of European businesses.

On 22 May 2024, ESMA published its position paper on building more effective and attractive markets in the EU (**Position Paper**) having assessed the current state of EU capital markets and concluded that the EU capital markets remain underdeveloped.

In the Position Paper, ESMA puts forward 20 recommendations which it believes will strengthen the EU capital markets union (**CMU**) focusing on EU citizens, EU companies and EU regulation and supervision.

Of relevance to the EU asset management sector are the following recommendations:

- The creation of a voluntary “basic” EU investment label which will be available to investment products which are “simple”, “easily accessible” and “cost-effective” and backed by an appropriate level of investor protection. ESMA has noted that this label could be made available to “certain basic UCITS funds”. Those investors with “lower knowledge and more basic investment needs” could then be directed to such funds with the final choice of investment then based on the investor’s risk appetite.
- The creation of a simplified and streamlined advice segment or guided execution for retail investors with basic investment needs. ESMA notes that this would be linked with those products which benefit from the EU “basic” investment product label.
- The European Commission should carry out a full review of the existing EU securitisation framework and put forward a proposal to revive the EU securitisation market. As part of this review, ESMA has recommended that the due diligence obligations imposed on institutional investors (which includes UCITS management companies and AIFMs investing in in-scope securitisations) should be assessed. The ESAs will provide advice on such potential reforms to the European Commission in Quarter 4 of 2024
- The current EU regulatory framework should be revised to provide regulators with greater adaptability and responsiveness to market developments and emerging risks without being required to re-open framework legislation to do so. ESMA has also called for it to be provided with regulatory forbearance powers so that it can temporarily suspend the application of provisions of EU law in exceptional circumstances.
- The European Commission and EU Member States should consider whether a revised Pan-European Personal Pension Product (**PEPP**) and other pan-EU long-term savings and investment products could make a contribution to EU capital markets.



- The European Commission, ESMA and the financial sector should examine and foster the use of technology to assist EU citizens to access investment products.

A copy of the Position Paper is available [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.

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