DILLON EUSTACE

DUBLIN CAYMAN ISLANDS NEW YORK TOKYO

Funds

Quarterly Legal and Regulatory Update

Period covered: 1 January 2024 – 31 March 2024

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1. APPROACHING DEADLINES [1] [2]

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	1 May 2024	New reporting obligations on EU legal entities whose proprietary rights are directly or indirectly owned for more than 40% by a Russian legal entity, Russian national or Russian resident relating to transfer of funds outside of the EU begin to apply. See Section 13.1 **below** for further information.
	6 May 2024	Revised ESMA guidelines on stress test scenarios under the MMF Regulation apply from this date. See Section 6.1 **below** for further information.
	24 May 2024	Irish funds authorised before 24 November 2022 which invest 50% or more directly or indirectly in Irish property assets (Property Funds) which are structured as open-ended funds with limited liquidity must comply with applicable provisions of the Central Bank's **guidance** on Property Funds relating to minimum liquidity timeframes.
	27 May 2024	All Irish fund management companies with additional individual portfolio management permissions authorised by the Central Bank on or before 27 November 2023 should ensure that they take all necessary steps to comply with the new "own funds" framework introduced by the Central Bank by 27 May 2024. See the **Dillon Eustace Quarter 4 2023 Funds QLU** for further information.
	27 May 2024	All Irish fund management companies authorised on or before 27 November 2023 must use the revised minimum capital requirement report published by the Central Bank on 27 November 2023 from this date. See the **Dillon Eustace Quarter 4 2023 Funds QLU** for further information.
Q2 2024	28 May 2024	New rules being implemented by the Securities & Exchange Commission in the United States to shorten the standard settlement cycle for most broker-dealer transactions in U.S. securities from two business days after the trade date (T+2) to one business day after the trade date (T+1) take effect.
	7 June 2024	Deadline for responding to the Central Bank's Consultation Paper 158 on its revised consumer protection code. See Section 3.2 **below** for further details.
	30 June 2024	All Irish fund management companies must have completed a review of their asset valuation frameworks in accordance with the Central Bank's Dear Chair Letter by this date. See the **Dillon Eustace Quarter 4 2023 Funds QLU** for further information.
	30 June 2024	Fund management companies which (i) are obliged due to their size or (ii) have chosen to report on the principal adverse impacts of investment decisions on sustainability factors must publish a PAI statement covering the 2023 calendar year on their websites or before this date.
	30 June 2024	All fund management companies with funds under management which are either: (i) authorised by the Central Bank of Ireland but never launched (i.e. did not issue any shares within 18 months of authorisation); or (ii) fully liquidated

[1] The "Approaching Deadlines" section does not include filing requirements in respect of any filing where the filing date is determined with reference to the relevant entity's annual accounting date (such as the filing of annual and semi-annual financial statements with the Central Bank) nor does it address any tax-related deadlines to which funds and fund management companies may be subject. Periodic reviews of matters such as the risk management framework, business plan and policies and procedures of fund management companies as well as any other actions required to be taken under the Irish Funds Corporate Governance Code are also excluded from the remit of this section as the dates for completion of same are determined by the relevant fund management company/fund rather than being set down in relevant legislation or guidance.

[2] To the extent that they have not already done so, 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".

		must complete the completed revocation forms for such funds and submit them to fundrevocations@centralbank.ie by 30 June 2024.
Q3 2024	1 July 2024	New reporting obligations on EU credit institutions and financial institutions which initiate transfers of funds of any EU entity whose proprietary rights are directly or indirectly owned for more than 40% by a Russian legal entity, Russian national or Russian resident outside of the EU begin to apply. See Section 13.3 **below** for further information.

2. UCITS & AIFMD

2.1 Publication of Directive (EU) 2024/927 in the Official Journal of the European Union

Directive (EU) 2024/927 which amends AIFMD[3] and the UCITS Directive[4] was published in the Official Journal of the European Union **(Official Journal)** on 26 March 2024 (**Omnibus Directive)**.

The Omnibus Directive enters into force on 15 April 2024 and must be transposed into national law by EU Member States by 16 April 2026.

Significant amendments made to the existing AIFMD and UCITS frameworks by the Omnibus Directive include the following:

(i) Delegation arrangements: strengthening of existing rules and increased supervision by ESMA and national competent authorities of such delegation arrangements through imposing enhanced reporting obligations on fund management companies relating to such arrangements
(ii) Liquidity risk management: introduction of a new regime governing the use of liquidity management tools by UCITS funds and open-ended AIFs;
(iii) Loan origination: introduction of a pan-EU loan origination framework which sets down a common set of rules for AIFMs managing AIFs which engage in lending to third parties and which allow AIFMs who originate loans on behalf of AIFs under management to passport such services into other EU Member States
(iv) Depositary passport: the ability for an AIF to appoint a depositary located in another EU jurisdiction in certain specific circumstances;
(v) Enhanced supervisory reporting regime: extension of the AIFMD "Annex IV" reporting framework to UCITS management companies and enhancements to the standardisation of reporting including the removal of duplications and inconsistencies between reporting frameworks of different sectors of the financial industry.

Under the Omnibus Directive, ESMA has been tasked with preparing implementing regulations and guidelines on a range of specific matters relating to delegation, loan origination and liquidity management tools amongst others. It has indicated that it will publish consultations on (i) guidelines on the selection and calibration of liquidity management tools and (ii) regulatory technical standards on the characteristics of liquidity management tools in Quarter 2/Quarter 3 of 2024.

A copy of the Omnibus Directive is available **here**.

A Dillon Eustace three-part video series on the changes being introduced under the Omnibus Directive is available **here.**

Key Action Points	Fund management companies should monitor the consultations published by ESMA relating to the Omnibus Directive in the course of 2024 and if desired, respond to same.

[3] Directive 2011/61/EU
[4] Directive 2009/65/EC

3. CENTRAL BANK OF IRELAND

3.1 Central Bank of Ireland publishes its first Regulatory Supervisory Outlook Report

On 29 February 2024, the Central Bank of Ireland (**Central Bank**) published its first "Regulatory & Supervisory Outlook" report (**Report)**. The Report sets out the Central Bank's perspective on the key trends and risks as well as outlining its regulatory and supervisory priorities for the next two years across all of the sectors regulated by it.

Of particular relevance to Irish fund management companies and Irish domiciled funds is the section of the report entitled "Funds and Securities Markets". This section of the Report outlines the trends and risks existing within the Irish funds sector.

The Report also sets out its key supervisory activities for 2024/2025 and its expectations for fund management companies in the funds and securities markets sector.

A copy of the Report is available **here.**

For a detailed analysis of the Report, including our suggested actions that should be taken by Irish fund management companies to manage the risks identified by the Central Bank, please refer to our briefing on the Report which is available **here**.

Key Action Points	Irish fund management companies should review the Report against their existing frameworks and ensure that appropriate action is being taken to manage the risks identified by the Central Bank.

3.2 Central Bank publishes a consultation paper on its Consumer Protection Code

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

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

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

The first of these, titled the Central Bank Reform Act 2010 (Section 17A) Regulations, will house the “business standards” referenced in the Central Bank (Individual Accountability Framework) Act 2023. These will replace and enhance the “General Principles” of the existing code and will be supplemented by “Supporting Standards for Business” which will provide further detail on firms’ obligations. These requirements will apply to all Irish regulated financial service providers, including Irish management companies and Irish corporate funds. The draft regulation is set out in Annex 3 to the Consultation Paper.

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

The consultation closes on 7 June 2024.

A copy of the Consultation Paper is available **here**.

For a detailed overview of the Consultation Paper, please refer to our briefing on the topic which is available **here**.

Key Action Points	Irish fund management companies and Irish corporate funds should review the Consultation Paper and, if desired, respond to the consultation before the deadline of 7 June 2024.

3.3 Central Bank of Ireland announces independent review into its Fitness & Probity approval process

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

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

For a detailed overview of the IFSAT judgement, please refer to our briefing on the topic which is available **here.**

A copy of the IFSAT judgement is available **here.**

The public statement published by the Central Bank following the IFSAT judgement is available **here.**

A copy of the terms of reference issued by the Central Bank for the review is available **here.**

3.4 Central Bank of Ireland amends the scope of PCF-16 Branch Manager outside of the State

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

In that communication, the Central Bank confirmed that the role of branch manager of a branch established outside of the State (i.e. an "outgoing" branch) will only constitute a PCF-16 role for the purposes of its Fitness & Probity regime where the business arising from the branch amounts to 5% or more of, as applicable, the assets or revenues or gross written premium of the relevant regulated financial service provider. As a result, only those individuals proposed to be appointed to the role of branch manager of an outgoing branch which meets this materiality threshold will be required to be prior approved by the Central Bank before assuming the role.

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

A copy of the relevant information note is available **here**.

3.5 Central Bank of Ireland imposes fine for breach of obligations under Market Abuse Regulation

On 27 February 2024, the Central Bank fined Goodbody Stockbrokers Unlimited Company (**Goodbody)** €1,225,000 pursuant to the EU Market Abuse Regulation[5] for its failure to put in place an effective trade surveillance framework to monitor, detect and report suspicious

[5] Regulation 596/2014/EU

orders and transactions in relation to market abuse as required under Article 16(2) of the EU Market Abuse Regulation in the period between July 2016 and January 2022.

In its public statement announcing the imposition of the fine, the Central Bank noted that it had published Dear CEO letters to industry in 2019 and 2020 in which it outlined the key provisions of the legislation governing market abuse, re-emphasised earlier industry messaging and provided further clarity on its findings from reviews into compliance by in-scope firms. It further noted that these Dear CEO letters provided "*key opportunities for firms to review their approach and take steps to ensure compliance with MAR*". However, the Central Bank investigation found that notwithstanding this, Goodbody failed to identify critical market abuse risks to which it was potentially exposed, had significant gaps in its control environment for market abuse monitoring, failed to implement an appropriate governance framework and failed to implement an appropriate "three lines of defence" model.

A copy of the public statement issued by the Central Bank on the imposition of the fine on Goodbody is available here.

Key Action Points	Irish fund management companies falling within the scope of the Market Abuse Regulation should ensure that their risk management and governance framework required under Article 16(2) of the Market Abuse Regulation aligns with the Central Bank supervisory expectations.

4. SUSTAINABLE FINANCE

4.1 Political agreement reached on proposal for regulation of ESG rating activities

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

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

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

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

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

A copy of the text provisionally agreed by the Council and the Parliament is available **here.**

A copy of the press release published by the Council is available **here.**

4.2 Significant changes to draft Corporate Sustainability Due Diligence Directive approved by EU Council

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

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

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

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

A copy of the draft CSDDD approved by the Council PRC is available **here**.

A copy of the related press release from the Council is available **here**.

4.3 ESG Round-Up

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

On 8 February 2024, the Parliament and the Council reached political agreement on the Commission's proposal to postpone the deadline for adopting sector-specific European sustainability reporting standards under the CSRD framework by two years until mid-2026.

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

The provisional agreement reached between the Council and the Parliament must be endorsed and formally adopted by both institutions before being published in the Official Journal.

For further details on sector-agnostic sustainability reporting standards please refer to our previous Funds Quarterly Legal and Regulatory Update 1 October 2023-31 December 2023 which is available **here**.

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

Under the EU Green Bond Regulation[6], ESMA is tasked with developing technical standards and guidelines specifying certain provisions in order to give effect to the provisions of that regulation.

[6] Regulation (EU) 2023/2631

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

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

A copy of the ESMA consultation paper is available **here.**

A copy of the EU Green Bond Regulation is available **here.**

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

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

On 1 March 2024, EFRAG released a second set of technical explanations which are available **here**.

(iv) ESMA publishes analysis on impact investing

On 1 February 2024, ESMA published an analysis entitled "Impact investing-Do SDG funds fulfil their promises?" in which it analyses a suite of funds which claim to contribute to achieving the United Nations Sustainable Development Goals (SDG funds) and proposes and summarises a methodological approach towards identifying such funds and assessing the extent to which their holdings align with their claims of fulfilling the United Nations Sustainable Development Goals

A copy of the analysis is available **here.**

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

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

A copy of the revised edition of the Q&A is available **here.**

5. PRIIPS REGULATION

5.1 Publication of revised ESA Q&A on the PRIIPS Regulation

On 15 March 2024, the ESAs published a revised version of their Q&A on the PRIIPs KID (**ESA Q&A**).

In it, the ESAs provide new guidance on the following elements of the PRIIPs KID which will be relevant to all UCITS funds and AIFs which prepare a PRIIPs KID:

- Past Performance: The obligation to publish updated past performance data of the relevant UCITS on the website (which must be signposted in the PRIIPs KID) within 35 business days of 31 December in each year. The ESAs also confirm that in the case of an AIF which prepares a PRIIPS KID, it is expected that the updated past performance of the relevant AIF is published within the same timeframe.

- Redemption provisions: The interplay on disclosures relating to redemption terms arising in the section of the PRIIPs KID entitled "What is this product" and "How long should I hold it and can I take money out early" and what information should be disclosed in each of these sections;
- Ability to compulsorily redeem shares of the relevant fund in certain circumstances**:** The type of information the ESAs expect to be provided to investors in order to comply with the disclosure obligation to provide information on whether the relevant PRIIPS manufacturer can compulsorily redeem shares in the relevant fund without investor consent and the circumstances in which this right can be exercised;
- Clarification on circumstances in which the template currency risk disclaimer must be included in the PRIIPs KID;
- Alignment of costs disclosed in the "Costs over Time" table and the "Composition of Costs" Table;
- Distinction between a "benchmark" and a "proxy" under the PRIIPS rules;
- Prohibition on the use of an artificially created synthetic proxy: Confirmation that an artificially created synthetic proxy cannot be considered an appropriate proxy for the purposes of determining a fund's SRI figure or for calculating a fund's forward looking performance scenarios; and
- Confirmation that when calculating the SRI of the relevant fund, it is possible to supplement historical data for a daily share class with data from a suitable benchmark/proxy for a 5 year range provided that the fund has a minimum of 2 years of observed returns;
- Clarification on what is meant by "open to subscription" in Article 8(3) of the PRIIPS delegated regulation; and
- Clarification on the rules applicable to calculation of future looking performance scenarios in the case of AIFs which are subject to a lock-up period.

A copy of the revised ESA Q&A on PRIIPs KID is available **here.**

Key Action Points	UCITS management companies and AIFMs which produce PRIIPS KID in respect of funds under management should now assess any changes that may need to be made such PRIIPS KID in order to ensure that they align with the supervisory expectations outlined in the revised ESA Q&A on PRIIPS KID.

5.2 ECON Committee of European Parliament approves amendments 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.

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

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

(i) extending the PRIIPS KID from 3 to 4 pages; and

(ii) imposing an obligation on the ESAs in conjunction with national competent authorities to develop an independent online comparison tool to allow investors to compare products and filter categories of products by Member States. They have proposed that a link to the tool should be disclosed in each PRIIPS KID once the tool is available.

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

A copy of the revised proposals adopted by the ECON Committee is available **here.**

The original proposal put forward by the European Commission on amendments to the PRIIPS Regulation is available **here.**

A Dillon Eustace briefing providing an overview of the European Commission's original proposals to amend the PRIIPS Regulation is available **here**.

6. MONEY MARKET FUNDS

6.1 ESMA publishes revised guidelines on stress test scenarios under the MMF Regulation

On 6 March 2024, ESMA published revised guidelines on stress test scenarios under Article 28 of the MMF Regulation.

The revised guidelines setting down the parameters for the stress test scenarios to be included in the stress tests conducted by managers of EU Money Market Funds under Article 28 of the MMF Regulation.

The revised guidelines apply from 6 May 2024.

A copy of the revised guidelines is available **here.**

7. ELTIF

7.1 Central Bank of Ireland finalises rules governing Irish ELTIFs

On 11 March 2024, the Central Bank of Ireland published a revised edition of its AIF Rulebook which contains a new chapter containing the domestic requirements imposed by the Central Bank on Irish domiciled ELTIFs.

On the same date, the Central Bank published its feedback statement to Consultation Paper 155 and updated its website to provide information on the authorisation process and the relevant application forms required for ELTIF applications which the Central Bank is now accepting.

For an overview of the Irish ELTIF, please view our three-part video series which is available **here**.

For an in-depth analysis of the key features of an Irish ELTIF, please access our up-to-date guide which is accessible **here**.

A copy of the revised Central Bank AIF Rulebook is available **here.**

The Central Bank's feedback statement to Consultation Paper 155 is available **here.**

7.2 European Commission requests ESMA to prepare revised implementing measures under the ELTIF Regulation

Under the ELTIF Regulation[7], ESMA is mandated to prepare draft implementing measures on various aspects of the ELTIF framework, including the specific rules which should be applied to ELTIFs which offer limited redemption rights and the requirements which should be satisfied by any ELTIF offering a liquidity matching mechanism to investors.

In December 2023, it published a report containing its finalised proposals which was submitted to the European Commission for its consideration (**Final Report**).

On 6 March 2024, the European Commission wrote to ESMA notifying it of its intention to adopt the proposals put forward by ESMA in its final report with amendments **(Letter)**. It asked ESMA to revisit the draft implementing measures contained in ESMA's Final Report to take a more "proportionate approach" to the drafting of the implementing measures, particularly with respect to the calibration of the requirements related to redemptions and liquidity management tools. The European Commission advised ESMA that the redemption notice periods applicable to ELTIFS offering redemptions should not be linked with "fixed" percentage of minimum liquid assets and that the minimum 12-month notice period proposed by ESMA should be removed.

[7] Regulation (EU) 2015/760 as amended

ESMA is now required to re-draft the implementing measures contained in the Final Report and must deliver same to the European Commission by 17 April 2024. Failing this, the European Commission can adopt the implementing measures with the amendments it considers relevant or alternatively reject them in their entirety.

A copy of the Letter is available **here.**

A copy of the Final Report is available **here.**

8. CROSS-BORDER DISTRIBUTION FRAMEWORK

8.1 Publication of updated cross-border notification forms in the Official Journal

On 25 March 2024, new notification templates for the provision of cross-border services and marketing registrations for both AIFMs and UCITS were published in the form of delegated regulations and implementing regulations in the Official Journal. These templates, which are intended to improve cross-border notifications, require the disclosure of certain additional information previously not provided to national competent authorities. These disclosures will also change the processes behind such cross-border notifications.

The new templates must be used for AIFM notifications from 14 April 2024 onwards and from 14 July 2024 for notifications relating to UCITS and UCITS management companies.

For a detailed overview of the new disclosure obligations which will apply for such notifications, please refer to our briefing on the topic which is available **here.**

A copy of Commission Implementing Regulation (EU) 2024/910 is available **here.**

A copy of Commission Delegated Regulation (EU) 2024/911 is available **here.**

A copy of Commission Delegated Regulation (EU) 2024/912 is available **here.**

A copy of Commission Implementing Regulation (EU) 2024/913 is available **here.**

8.2 HM Treasury announces equivalence decisions for EEA UCITS

On 30 January 2024, the HM Treasury in the UK confirmed the granting of an equivalence decision for EEA Member States under its UK Overseas Fund Regime (OFR). The decision marks the first step in the journey towards the operation of the OFR and the re-opening of the UK market for EEA UCITS. The statement published by HM Treasury also confirms its intention to extend the period of the current Temporary Marketing Permission Regime (TMPR) for funds which were registered to market in the UK prior to Brexit for a further 12 months, to end 2026, to ensure such funds are able to smoothly transition to the OFR.

This follows the publication by the Financial Conduct Authority in the UK of a consultation paper in December 2023 in which it set out its proposed rules to allow overseas funds to be recognised under the OFR. The FCA has indicated that it intends to publish its final policy statement and final handbook rules on the OFR in Quarter 2 2024.

A copy of the statement delivered by HM Treasury is available **here.**

For further information on the proposed OFR regime, please refer to our detailed briefing on the topic which is available **here.**

9. EMIR & SFTR

9.1 EMIR Refit Reporting Regime

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

The new EMIR Refit[8] reporting regime introduces:

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

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

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

An earlier Dillon Eustace briefing on the topic is available **here**.

The main reporting changes introduced under the new regime include:

- a standardised reporting format must be used;
- XML EMIR Reporting Schemas must be used for incoming messages and outgoing messages to trade repositories (**TRs**);
- a significantly increased number of reporting fields must be addressed;
- enhanced pairing and matching obligations of TRs;
- TRs are required to report to each report submitting entity (**RSE**) on rejections of trades, reconciliation breaks and other data quality issues within strict timelines;
- a new obligation on the entity responsible for reporting (**ERR**) to notify the relevant national competent authorities in the event of significant reporting issues; and
- A transition period of 180 days to allow for the reporting of any derivatives outstanding as at 29 April 2024 under the new regime.

9.2 ESMA updates Q&As on EMIR

On 2 February 2024, ESMA published a press release to announce that it had updated its Questions and Answers (**Q&A**) on EMIR, with updates made in relation to the following topics:

- ETDs Reporting Question;
- Reporting under STM/CTM model;
- Update of the client codes;

[8] Regulation 648/2012 on OTC Derivatives, Central Counterparties and Trade Repositories (**EMIR**) as amended by Regulation (EU) 2019/834 under the European Commission's Regulatory Fitness and Performance programme (**EMIR Refit**)

- Reporting of a Counterparty falling within scope of Article 1(4)(a) and (b);
- Portability of Schedules; and
- Subsidiaries.

A copy of ESMA's press release can be accessed **here**.

The updated Q&A can be accessed in the ESMA Q&A IT-tool which can be accessed **here**.

9.3 Delegated Regulation extending temporary emergency measures on CCP collateral requirements published in Official Journal

On 6 March 2024, Commission Delegated Regulation (EU) 2024/818 (**Delegated Regulation**) was published in the Official Journal.

The Delegated Regulation amends the Commission Delegated Regulation (EU) 153/2013 to extend temporary emergency measures which expand the pool of eligible collateral that CCPs can accept to include uncollateralised bank guarantees for non-financial counterparties acting as clearing members and public guarantees for all types of counterparties (subject to certain conditions). The measures have been extended until 1 September 2024.

The Delegated Regulation aims to avoid a potential discontinuity in the treatment of guarantees before the outcome of the EMIR 3.0 negotiations is known.

A copy of the Delegated Regulation can be accessed here.

9.4 Council of EU and European Parliament reach provisional agreement on EMIR 3.0

On 7 February 2024 the Council announced that it had reached provisional agreement with the Parliament on the proposal for a regulation amending EMIR seeking to make derivatives clearing in the EU more attractive. This proposal is commonly referred to "EMIR 3.0".

EMIR 3.0 contains a number of legislative measures to improve EU clearing services. These measures are comprehensive and include by way of example:

- Changes to the methodology applying to a counterparty when determining its aggregate positions for applying the clearing threshold;
- A requirement for counterparties who are subject to a clearing obligation (FC+/ NFC+) that exceed the clearing thresholds in any of the categories of derivative contracts identified by ESMA as of "substantial systemic importance" to have an operationally active account at an EU CCP (**Active Account Requirement**).
- Various reforms of other aspects of the EMIR regime, including various exemptions, changes to reporting obligation and risk mitigation measures and changes to CCP requirements.

The Active Account Requirement as envisaged in the original proposals in 2022 proved to be contentious within industry. The revised position on the Active Account Requirement as now agreed between the Council and the Parliament is less onerous than the requirements originally proposed and includes the following:

- The requirement will apply to counterparties who are subject to a clearing obligation (FC+/ NFC+) and exceed the clearing thresholds in any of the categories of derivative contracts identified by ESMA as of substantial systemic importance (initially interest rate derivatives denominated in Euro and Polish Zloty and short-term interest rate derivatives (**STIR**) denominated in Euro);
- Certain rules apply to group entities including the fact that derivative contracts of third-country subsidiaries of Union groups (with the exception of intragroup transactions) should be included also to prevent that those groups move their clearing activities outside the Union in order to avoid the requirement;

- The requirement can be met by counterparties establishing accounts at EU CCPs that are permanently functional provided that the active accounts include operational elements so that the counterparty can be ready for quickly clearing a significant number of trades;
- In scope counterparties will be obliged to clear trades in the account with an EU CCP in the most relevant sub-categories of derivatives of substantial systemic importance defined in terms of class of derivative, size and maturity (the representativeness requirement). A de-minimis threshold will apply to the representativeness requirement;
- Such counterparties clear on an annual average basis, at least five trades in each of the most relevant subcategories per class of derivative contracts and per reference period;
- counterparties that are already clearing a majority/significant amount of their transactions in interest rate derivatives denominated in Euro and Polish Zloty and STIR denominated in Euro at EU CCPs will not be subject to the operational requirements.
- 18 months following the entry into force of EMIR 3.0, ESMA will assess whether the Active Account Requirement should be expanded to include quantitative clearing thresholds, under which in-scope counterparties would have to clear a predetermined share of in-scope financial transactions with an EU CCP.

The proposed regulation also seeks to amend the Money Market Funds Regulation[9] to eliminate counterparty risk limits for all derivative transactions that are centrally cleared by a CCP that is authorised or recognised under EMIR. It also seeks a number of targeted amendments to the Capital Requirements Regulation[10].

A separate directive published alongside EMIR 3 seeks to amend the UCITS Directive, the IFD[11] and the CRD[12]. The changes to the UCITS Directive seek to eliminate counterparty risk limits for all OTC derivative transactions that are centrally cleared by an EU CCP or a third country CCP recognised under EMIR. The proposed directive seeks also proposes revisions to the IFD[13] and the CRD[14] which are aimed at encouraging investment firms and credit institutions to systematically address any excessive concentration risk that may arise from their exposures towards CCPs.

The provisional political agreement on the proposed regulation is subject to approval by the Council and the Parliament before going through the formal adoption procedure. The European Parliament plenary is scheduled to vote on the final texts during the week of 22 April 2024. The proposed regulation and the proposed directive will enter into force following their publication in the Official Journal which could take place in Quarter 2 of 2024. The Active Account Requirement will apply to in-scope counterparties from within six months of the regulation entering into force or from when the counterparty becomes subject to the clearing obligation.

A copy of the press release of the Council is available **here**.

The final compromise text of the proposed regulation is available **here**.

A "I" item note on the compromise text of the proposed regulation is available **here**.

The final compromise text of the proposed directive is available **here**.

Key Action Points	AIFMs and UCITS management companies must familiarise themselves with the updated reporting requirements and make sure they are able to source and report the additional information in a timely manner. They must (i) be able to identify and resolve any report rejections, reconciliation breaks or other quality issues observable in data that has been reported; and (ii) be in a position to engage with the Central Bank and any other national competent authorities (as appropriate) as soon as possible after any significant reporting issues are identified. They must also ensure that they have appropriate policies and procedures to address the

[9] Regulation (EU) 2017/1131 as amended
10 Regulation (EU) No 575/2013 as amended
[11] Directive 2019/2034 as amended
[12] Directive 2013/36/EU as amended
[13] Directive 2019/2034 as amended
[14] Directive 2013/36/EU as amended

	obligations under the new regime and will also need to review their existing delegated reporting arrangements so as to ensure that appropriate operational and technical reporting will be provided to them to enable them to discharge their obligations.

10. AML & CTF

10.1 Status update on EU AML Package

The EU AML Package comprises:

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

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

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

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

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

Location of AMLA Seat Finalised

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

A copy of the Council's press release can be accessed **here**.

A copy of the Parliament's related press release can be accessed **here**.

Commission requests EBA technical advice

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

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

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

A copy of the Call for Advice can be accessed **here**.

10.2 Updates to the EU list of high-risk third countries under MLD4

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

On 18 January 2024, a Commission Delegated Regulation (EU) 2024/163 (**Delegated Regulation**) was published in the Official Journal of the EU. The Delegated Regulation removes Cayman Islands and Jordan from the list of high-risk third countries published by the European Commission[15].

The Delegated Regulation entered into force on 7 February 2024.

A copy of the Delegated Regulation can be accessed **here**.

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

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

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

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

A copy of the Delegated Regulation can be accessed **here**.

11. DATA PROTECTION

11.1 European Commission launches a call for evidence on GDPR review

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

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

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

The consultation period for feedback closed on 8 February 2024.

A copy of the call for evidence is available **here**.

[15] As set out in Annex to Commission Delegated Regulation (EU) 2016/1675 supplementing MLD4 as revised

12. BENCHMARKS REGULATION

12.1 ECON Committee of European Parliament adopt a draft proposal on reform of the Benchmarks Regulation

On 17 October 2023, the European Commission published a proposal to amend the Benchmarks Regulation which significantly reduces the scope of the rules set down in the Benchmarks Regulation (**European Commission Proposal**).

The proposed reform of the existing regime is intended to reduce the administrative and regulatory burden imposed both on EU benchmark users (which will include UCITS management companies and AIFMs which "use" a benchmark within the meaning of the Benchmarks Regulation on behalf of funds under management) and on EU benchmark administrators.

Proposed amendments to the existing Benchmarks Regulation regime include restriction of its application to administrators of EU benchmarks that are (i) "significant" benchmarks, (ii) "critical" benchmarks and (iii) EU "climate" benchmarks (i.e. those established as Paris-aligned benchmarks or Climate-transition benchmarks) and (iv) certain commodity benchmarks. This is in order to ensure a level playing field between third country benchmarks and EU benchmarks. The Commission has proposed that the new rules will apply directly in the Member States as of 1 January 2026.

The revised legislative text adopted by ECON must be approved at plenary session by the European Parliament. Trialogue negotiations between the Parliament and the Council on the legislative text is not expected to start until after the MEP elections in June 2024.

A copy of the ECON report containing its proposed amendments to the legislative text proposed by the European Commission in October 2023 is available **here**.

A copy of the European Parliament's press release is available **here**

13. MISCELLANEOUS

13.1 Commission adopts delegated regulations supplementing the Digital Operational Resilience Act (DORA)

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

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

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

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

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

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

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

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

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

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

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

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

A copy of Council Regulation (EU) 2023/2878 is available **here.**

A copy of the revised edition of the Commission's FAQ is on EU restrictive measures relating to actions in Ukraine is available **here**.

A copy of the Commission's reporting template is available **here.**

The Central Bank's webpage on EU restrictive measures relating to actions in Ukraine is available **here**.

Key Action Points	In-Scope EU Entities should ensure that an appropriate reporting framework is implemented so that any transfer of funds outside of the European Union which exceeds €100,000 is reported to the relevant competent authority within the prescribed timeframe outlined above.

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

As of 1 May 2024, credit institutions and financial institutions must report to their national competent authority information on all transfers of funds outside of the EU of a cumulative amount exceeding €100,000 that they initiated, directly or indirectly, for an In-Scope EU Entity (as described in Section 13.2 above) during the previous semester within two weeks of the end of the relevant semester.

The Revised FAQ (referenced in Section 13.2 above) confirms that the first report to be made by in-scope credit institutions and financial institutions should cover the period from 1 January 2024 to 30 June 2024 and should be submitted to the relevant competent authority by 15 July 2024. It also confirms that this reporting obligation imposed on credit and financial institutions applies regardless of whether or not the In-Scope EU Entity has already reported the relevant transfer to its national competent authority.

As noted in Section 13.2 above, the Commission has also published a reporting template which can be used by in-scope credit institutions and financial institutions for the purposes of reporting the relevant information to their national competent authorities. The Commission has noted that this is a recommendation and that in-scope credit institutions or financial institutions are not obliged to use this specific template for the purposes of complying with this reporting obligation.

Links to all relevant documents are provided at Section 13.2 above.

Key Action Points	EU credit institutions and financial institutions which initiate transfers of funds on behalf of In-Scope EU Entities outside of the EU should ensure that an appropriate reporting framework is implemented so that any transfer of funds outside of the European Union which exceeds €100,000 made between 1 January 2024 and 30 June 2024 is reported to the relevant national competent authority by 15 July 2024 and thereafter on a bi-annual basis.

13.4 Further package of economic sanctions against Russia announced by the Council of European Union

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

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

The European Commission's webpage on sanctions adopted following Russia's military aggression against Ukraine is available **here.**

The Central Bank's webpage on EU restrictive measures relating to actions in Ukraine is available **here.**

13.5 ECON Committee adopts its report on EU Retail Investment Strategy

As part of its Retail Investment Strategy announced in May 2023, the European Commission has proposed that a number of changes be made to the MiFID II Directive[16], the Insurance Distribution Directive (IDD)[17], the UCITS Directive[18], AIFMD[19] and the Solvency II Directive[20] by way of an omnibus directive.

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

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

[16] Directive 2014/65/EU
[17] Directive 2016/97
[18] Directive 2009/65/EC
[19] Directive 2011/61/EU
[20] Directive 2009/138/EC

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

A copy of ECON's press release can be accessed **here**.

13.6 ESMA publishes feedback statement on Call for Evidence on shortening the securities settlement cycle

On 5 October 2023, ESMA published a call for evidence seeking feedback from relevant stakeholders on the possibility of shortening the securities settlement cycle in the European Union from the current T+2 model to T+1 or T+0 (**Call for Evidence**). This follows moves from other global regulators to shorten the securities settlement cycle, with the US Securities and Exchange Commission recently implementing rules which move the US securities settlement cycle to T+1 on 28 May 2024.

On 21 March 2024, ESMA published its feedback statement in respect of the Call for Evidence (**Feedback Statement**) in which it noted that views of respondents on shortening the settlement cycle were quite mixed. It also noted that there are several questions which need to be further assessed and better understood before it concludes whether a shortening of the EU settlement cycle should be implemented.

The Feedback Statement also provided ESMA's view on potential breaches by UCITS funds as a result of the move to a T+1 settlement cycle for US and Canadian securities from end-May 2024. It provides guidance on the scope of the UCITS limits for investments in deposits and notes that it will continue to monitor market developments and consider whether any actions or guidance are needed to ensure supervisory convergence on how breaches of UCITS borrowing rules arising from a mismatch in settlement cycle are dealt with by EU national competent authorities.

ESMA must now prepare a report to the European Commission on the appropriateness of shortening the EU settlement cycle, the cost-benefit analysis of such a change, how such changes would be implemented and the impact of such a change on EU markets and stakeholders. This must be submitted to the European Commission by 17 January 2025.

Separately, on 28 March 2024, the UK Accelerated Settlement Taskforce also published a report outlining its recommendations to move to a T+1 settlement cycle no later than 31 December 2027 and that the UK and other EU jurisdictions should collaborate closely to see if a coordinated move to T+1 is possible.

A copy of the Feedback Statement is available **here.**

A copy of the report published by the UK Accelerated Settlement Taskforce is available **here.**

13.7 European Parliament approves the European Union Artificial Intelligence Act

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

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

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

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

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

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

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

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

A copy of the EU AI Act approved by the Parliament is available **here**.

The press release published by the Parliament announcing its approval of the EU AI Act is available **here**.

Key Action Points	Firms should begin to map current use of AI systems within their organisations and assess what risk category each such AI system falls within under the EU AI Act in order to determine applicable obligations which will apply to the use of any such AI system under the new framework. Firms should also monitor the publication of the EU AI Act in the Official Journal and the publication of various implementing and delegated measures and guidelines expected to be published by the Commission in the coming months.

13.8 ESMA issues warning on posting investment recommendations on social media

On 6 February 2024, ESMA published a warning in relation to posting investment recommendations on social media (**Warning**). The Warning seeks to raise awareness on:

i) requirements established under the Market Abuse Regulation[21] and related implementing delegated regulation[22] regarding posting investment recommendations on social media; and
ii) the risks of market manipulation when posting on social media.

The Warning addresses:

- what constitutes an investment recommendation under the MAR framework;
- consequences of non-compliance with MAR including administrative or criminal sanctions;
- differing and additional obligations applying to professionals (such as investment firms) and experts;
- the risks arising from market abuse; and
- practical examples of different types of investment recommendations and the unlawful disclosure of inside information.

[21] Regulation 596/2014 as amended
[22] Commission Delegated Regulation 2016/958

A copy of the Warning 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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