DILLON EUSTACE

DUBLIN CAYMAN ISLANDS NEW YORK TOKYO

Funds

Quarterly Legal and Regulatory Update

Period covered: 1 July 2024 - 30 September 2024

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1. APPROACHING DEADLINES [1] [2]

	1 October 2024	Landing slots for stand-alone UCITS schemes currently operating under the UK's Temporary Marketing Permissions Regime to register under the UK Overseas Funds Regime open. For further details, see **Section 6.1** below.
Q4 2024	8 October 2024	Deadline for responding to ESMA's consultation papers on draft regulatory technical standards and draft guidelines on liquidity management tools under the revised UCITS and AIFMD frameworks. For further details, see **Section 2.2** below.
	18 October 2024	The Central Bank of Ireland's (**Central Bank)** streamlined filing process for pre-contractual document updates addressing disclosure obligations arising under level 2 measures published under the SFDR closes. For further details, see **Section 4.3**. below.
	1 November 2024	Landing slots for UCITS umbrella schemes currently operating under the UK's Temporary Marketing Permissions Regime to register under the UK Overseas Funds Regime open for the first time with those slots being allocated alphabetically according to the fund management company's name. For further details, see **Section 6.1** below.
	21 November 2024	ESMA Guidelines on fund names using ESG or sustainability-related terms begin to apply to all funds created on or after this date using an in-scope term in their name.
	22 November 2024	Deadline for responding to the European Commission's **consultation** on the adequacy of macroprudential policies for non-bank financial intermediation.
	4 December 2024	The European Commission's **consultation** on the functioning of the EU securitisation framework closes. This consultation seeks feedback on a range of issues including the scope of the application of the Securitisation Regulation and the due diligence and transparency obligations imposed on institutional investors under the existing framework.
	31 December 2024	Although not prescribed by the Central Bank under applicable legislation, Irish fund management companies and Irish investment funds should consider providing an annual refresh training session on the Central Bank's Individual Accountability Framework before year-end given the obligation under its **guidance** to provide ongoing training to individuals performing CF roles.
Q1 2005	1 January 2025	Financial statements of certain large companies published on or after this date must comply with the new reporting obligations introduced under the CSRD. See **Section 4.5** below for further details.

[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".

Q1 2025	31 January 2025	Deadline for all Irish UCITS management companies and AIFMs to file annual confirmation of ownership with the Central Bank.
	20 February 2025	All UCITS which continue to prepare a UCITS KIID must file updated KIIDS which contain updated performance data for the period ended 31 December 2024 and which incorporate any other required revisions with the Central Bank no later than 20 February 2025.
	28 February 2025	Deadline for filing the annual PCF/CF confirmation for both Irish authorised UCITS management companies/AIFMS and Irish authorised investment funds with the Central Bank. Prior to the filing of such confirmations with the Central Bank, the relevant entity will be required to issue a certificate confirming that it is satisfied that each PCF/CF continues to meet the fitness and probity standards issued by the Central Bank in order to comply with obligations introduced under the Central Bank Reform Act 2010 (Section 21(6) Regulations 2024.
	28 February 2025	Submission by Irish fund management companies of annual CBI fund profile return for each fund/ sub-fund under management
Q2 2025	21 May 2025	ESMA Guidelines on fund names using ESG or sustainability-related terms apply to all funds using an ESG or sustainability-related term in their name which are created before 21 November 2024 from this date.

2. UCITS & AIFMD

2.1 ESMA consults on rules governing the use of liquidity management tools by fund management companies

Directive (EU) 2024/927 (**Omnibus Directive)** introduces a number of changes to both the AIFMD and UCITS directives, including an obligation on UCITS management companies and those AIFMs managing open-ended AIFs to provide for the ability to use at least two liquidity management tools **(LMTs)** in the documentation of the relevant fund which must be drawn from a specific list of LMTs detailed in the Omnibus Directive.

The Omnibus Directive entered into force on 16 April of this year and must be transposed into Irish law by 16 April 2026.

Under the Omnibus Directive, ESMA is tasked with preparing the regulatory technical standards (**RTS**) which specify the characteristics of each of the LMTs listed in the Omnibus Directive.

It is also tasked with drafting guidelines on the selection and calibration of such LMTs by UCITS management companies and in-scope AIFMs.

On 8 July 2024, ESMA published two consultation papers on the use of LMTs by in-scope fund management companies.

The first of the consultation papers contains its draft RTS specifying the characteristics of each of the LMT listed in the Omnibus Directive under which it sets down proposed constituting elements of each LMT, such as calculation methodologies and activation mechanisms.

The second consultation paper contains draft guidelines on how in-scope management companies should select and calibrate LMTs in light of their investment strategy, their liquidity profile and the redemption policy of the relevant fund.

Responses to the consultation papers must be submitted to ESMA by 8 October 2024.

ESMA must then deliver its finalised draft RTS and guidelines to the European Commission for its consideration by 16 April 2025.

A copy of the consultation papers are available **here**.

2.2 ESMA publishes new Q&A on UCITS and AIFMD

On 2 July 2024, ESMA published additional Q&A on the UCITS and AIFMD frameworks. These Q&A confirm as follows:

- The six-month derogation period under which recently authorised UCITS can derogate from the risk-spreading rules set down under the UCITS framework runs from the date of authorisation of the UCITS rather than from its date of launch;
- Internally managed AIFs and self-managed UCITS funds must ensure that initial capital and additional own funds should not be included in the fund's net asset value and appropriate procedures and systems must be maintained to ensure compliance with the own funds requirements set down in the UCITS and AIFMD frameworks;
- where an AIFM establishes a branch in another Member State solely to carry out functions other than risk management or portfolio management, a notification to its home NCA under Article 33(1)(a), Article 33(2) or Article 33(3) is not required. However ESMA notes that it may be required to provide information to its home NCA under other AIFMD provisions.

All Q&A published by ESMA on the UCITS and AIFMD frameworks are accessible **here.**

3. CENTRAL BANK OF IRELAND

3.1 Independent review of Central Bank's Fitness & Probity Regime concludes

On 11 July 2024, the Central Bank published a report of the independent review of its Fitness & Probity (**F&P)** regime carried out by Andrea Enria **(Review)**.

This Review was announced by the Central Bank following a judgment by the Irish Financial Services Appeals Tribunal in which it held that a decision by the Central Bank under its F&P process was flawed on account of an absence of fair procedures.

The Review concludes that the conduct of the F&P process at the Central Bank is broadly aligned with other peer jurisdictions across a number of dimensions. However, a number of areas were identified in which the operation of the F&P process was not always up to the requisite standards of fairness and transparency.

The recommendations put forward by Mr Enria in the Review have been accepted by the Governor of the Central Bank of Ireland who noted in his press release that the Central Bank will now look at the creation of a new unit to bring together F&P activities that are currently dispersed across the Central Bank.

Of relevance to Irish management companies and Irish-domiciled funds, the Review specifically includes a case study of the application of the F&P approval process in the case of funds and fund service providers and provides specific recommendations for the adaptation of the F&P interview process for the funds sector.

The following points are of particular interest:

- The Review recommends holding more F&P interviews in the funds sector as this would lead to a greater level of transparency and fairness in the process and de-stigmatise the interview process.
- The Review also notes that an increase in the number of interviews in the funds sector could also provide some form of F&P scrutiny on time commitments. The Central Bank should consider providing default interview criteria for those individuals holding multiple roles. The Review has suggested that this criteria should be applied if an individual attains 10 separate mandates or a lower number if families of funds are counted as a single mandate.

- The Central Bank should also consider conducting ongoing interview assessments (e.g. automatically interviewing every one hundredth application)

- Where the application relates to a fund/fund service provider with systemic impact and high assets under management, additional consideration could be given. The Central Bank should also consider engaging earlier in the due diligence process with a candidate who holds multiple roles

- Time limits should be applied by the Central Bank within which it will have processed all F&P applications to conclusion. Having considered other jurisdictions, this should be set at 90 days with "limited opportunities to stop the clock".

For a detailed analysis of the recommendations set down in the Review, please refer to our briefing on the topic which is available **here.**

A copy of the Review is accessible **here.**

A copy of the Central Bank's press release is available **here**.

3.2 Central Bank publishes Questions from Stakeholders on Individual Accountability Framework

On 1 July 2024, the Central Bank published an FAQ document in which it provides responses to questions raised by stakeholders on its Individual Accountability Framework (**IAF)**.

While the FAQ relating to the SEAR framework will not be relevant to Irish fund management companies will not be relevant, those questions relating to the individual conduct standards may be of interest. These FAQ address:

- The application of conduct standards to those CF providing incoming services on a freedom of service basis.

- Guidance on the extent to which individuals in group entities are considered to exercise a significant influence on the conduct of a subsidiary or related firm's affairs.

- The delivery of training on the IAF in situations where the CF and/or PCF roles are outsourced.

A copy of the FAQ is accessible **here.**

4. SUSTAINABLE FINANCE

4.1 EMSA confirms application date of finalised guidelines on funds' names using ESG or sustainability-related terms and Central Bank of Ireland confirms applicable filing arrangements for related documentation

On 21 August 2024, ESMA confirmed the application date of its guidelines on funds names using ESG or sustainability-related terms (**Guidelines**).

The Guidelines require all funds using an ESG or sustainability-related term in their names (**In-Scope Funds)** to comply with two rules, namely:

- the application of an "80% threshold" rule; and
- compliance with the exclusion criteria applicable to either EU Paris-Aligned Benchmarks or EU Climate Transition Benchmarks.

Funds using the term "sustainable" or a derivative thereof must also "invest meaningfully" in sustainable investments within the meaning of the SFDR while In-Scope Funds using a transition-related term or impact-related term are also subject to additional requirements.

The criteria to be met by In-Scope Funds will depend on the specific term used in the fund name.

The Guidelines will apply to all funds using an ESG or sustainability-related term in their name which are created on or after 21 November 2024 with immediate effect.

All funds using an ESG or sustainability-related term in their name which are created before 21 November 2024 must comply with the Guidelines from 21 May 2025.

The Central Bank has separately confirmed that it will facilitate a streamlined filing process for the filing of fund documentation which are updated to comply with the Guidelines where such changes are limited to name changes only. Any other changes to the SFDR-related disclosures in fund documentation will be subject to review by the Central Bank under standard post-authorisation processes.

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

A Dillon Eustace briefing providing a detailed analysis of the Guidelines is available **here**.

The Central Bank's Process Clarification Document is available **here**

Key Action Points	Fund Management Companies should assess the implications of the Guidelines on the naming convention used for their existing fund ranges and ensure that appropriate steps are taken to ensure compliance with the Guidelines by 21 May 2025. Those fund management companies intending to create a fund using an in-scope term in its name on or after 21 November 2024 should ensure that the proposed investment strategy complies with the requirements of the Guidelines from the date of its creation.

4.2 ESAs publish additional Q&A on the application of the SFDR

On 25 July 2024, the European Supervisory Authorities (**ESA**s) published a revised version of the Consolidated Questions and Answers (**Q&A**) on the SFDR and the SFDR Delegated Regulation.

The newly added Q&A provide additional guidance on a range of topics, including the following:

- The responsibility of the fund management company to determine whether an investment meets the test of a "sustainable investment" set down under Article 2(17) of the SFDR in situations (i) where a delegate investment manager has been appointed or (ii) the fund in question is a passively managed fund tracking an index.
- Whether investment in another fund can be categorised as a sustainable investment.
- The provision of a worked example demonstrating how the calculations of sustainable investment can be done either at economic activity level or investment level.
- The provision of a worked example demonstrating how to calculate the share of a sustainable investment that qualifies as environmentally sustainable under the EU Taxonomy, both for the purposes of the pre-contractual disclosures and the periodic report disclosures.
- The use of hedging or liquidity investments by funds falling within the scope of Article 9 of the SFDR.
- The categorisation of funds which do not passively track a Paris-aligned Benchmark or a Climate Transition Benchmark but which apply all of the requirements applicable to those categories of benchmarks set down in the Benchmarks Regulation framework[3].

[3] Commission Delegated Regulation (EU) 2020/1818

- The responsibility of the fund management company to determine whether an investment meets the test of a "sustainable investment" set down under Article 2(17) of the SFDR in situations where a delegate investment manager has been appointed.

- Specific guidance on certain elements of PAI reporting at entity level under Article 4 of the SFDR.

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

Key Action Points	Fund Management Companies should review the revised edition of the Q&A to determine whether any changes to their SFDR/Taxonomy compliance frameworks may be needed in light of the guidance provided by the ESAs in the Q&A.

4.3 Central Bank confirms closure of existing SFDR fast-track process

On 27 September 2024, the Central Bank confirmed that the streamlined filing process which it first established in 2022 for pre-contractual document updates addressing disclosure obligations arising under level 2 measures published under the SFDR will close on 18 October 2024.

Thereafter, any submissions related to must be submitted to the Central Bank in accordance with standard post-authorisation processes.

A copy of its communication is accessible **here.**

Key Action Points	To the extent that a Fund Management Company wants to use the existing SFDR fast-track process to file amendments to pre-contractual documents to address disclosure obligations arising under the SFDR, such filings should be made on or before 18 October 2024 via the SFDR@centralbank.ie email address.

4.4 ESMA issues opinion on the functioning of the EU sustainable finance framework

On 24 July 2024, ESMA published an opinion on possible long-term improvements which it believes should be made to the EU sustainable finance framework in order to improve its usability and coherence (**Opinion**).

The recommendations set down in the Opinion focus on improvements needed to the EU sustainable finance framework as a whole, with ESMA noting that any such revisions to the framework must address existing complexities and simplify the existing framework.

Some of the key recommendations put forward by ESMA to the European Commission in the Opinion include:

- A product categorisation system should be introduced which caters to sustainability and transition, based on a set of clear eligibility criteria and binding transparency obligations for each category.
- The EU Taxonomy should become the sole, common reference point for the assessment of sustainability and should be embedded in all sustainable finance legislation (including the SFDR, the Benchmarks Regulation etc).
- The EU Taxonomy should be completed for all activities that can substantially contribute to environmental sustainability. In addition, an EU social taxonomy should be developed.
- The definition of "sustainable investment" under the SFDR should be phased out as this definition fails to ensure a consistent minimum sustainability ambition of financial products and hampers comparability between them. In the medium term (until the EU Taxonomy is completed), the key parameters of a "sustainable investment" under the SFDR should be made more prescriptive.
- A definition of transition investments should be incorporated into the framework to provide legal clarity and support the creation of transition-related products.
- The European Commission should also consider the creation of high-quality EU labels for transition bonds and sustainability-linked bonds, based on its experience with the EU Green Bond Standard.

- All financial products should disclose some minimum basic sustainability information which should consist of a "small number of simple sustainability KPIs" which could include for example GHG emissions, Taxonomy alignment and human rights and labour rights.

A copy of the Opinion is accessible **here.**

4.5 CSRD is transposed into Irish law

The Corporate Sustainability Reporting Directive (EU) 2022/2464 (**CSRD)** requires all in-scope EU large companies, all EU listed companies (except listed micro-enterprises) and certain subsidiaries/branches of non-EU companies to disclose information in their annual financial statements on the impact of their activities on people and the environment and the risks and opportunities arising from environmental and social issues.

This sustainability information must be reported from a "double materiality" basis so that investors are provided with adequate information to understand (i) the impact that the company has on sustainability matters and (ii) how sustainability matters affect the company's development, performance and position. It must also be prepared in accordance with specific sustainability reporting standards published by EFRAG (**ESRS)**, and where applicable, be produced in machine-readable format. The sustainability information reported by in-scope companies is subject to an assurance requirement and must be published together with the related assurance report.

The CSRD's extensive reporting obligations are introduced on a phased basis with the first group of companies being required to apply the requirements for the 2024 financial year, for financial statements published in 2025[4]. All other large companies with greater than 250 employees must comply for the first time in respect of the financial year 1 January 2025 (reporting in the annual financial statements published in 2026) and listed SMES must comply for the first time in respect of the financial year 1 January 2026 (reporting in the annual financial statements published in 2027) with an opt-out possible until 2028.

Companies falling within the scope of the CSRD are also required to report Taxonomy-related information in accordance with Article 8 of the Taxonomy Regulation in their sustainability statements.

On 9 July 2024, the CSRD was transposed into Irish law via the European Union (Corporate Sustainability Reporting) Regulations 2024 which were published on 9 July 2024 (**Irish CSRD Regulations**) and which amend the Companies Act 2014 and the Irish Transparency Regulations of 2007.

On 4 October 2024, the European Union (Corporate Sustainability Reporting) (No.2) Regulations 2024 were published (**Irish CSRD Amending Regulations**), making a number of technical clarifications to the Irish CSRD Regulations.

A copy of the Irish CSRD Regulations is available **here**

A copy of the Irish CSRD Amending Regulations is available **here**

Key Action Points	To the extent not already completed, fund management companies should assess whether they fall within the scope of the CSRD (and consequently the reporting obligations imposed on entities under Article 8 of the Taxonomy Regulation) and if in scope, carry out a gap analysis to determine what changes to their existing sustainability reporting regime must be made in order to comply with the CSRD reporting obligations in accordance with the relevant timeframe.

[4] These comprise of large undertakings which are public-interest entities exceeding on their balance sheet dates the average number of 500 employees during the financial year

4.6 CSRD Round-Up

European Commission publishes FAQ on CSRD

On 7 August 2024, the European Commission published an FAQ on the implementation of the CSRD, providing guidance on the interpretation of certain provisions of the legislation, including for example the scope of the CSRD, application dates, the sustainability reporting assurance framework, value chain reporting and applicable exemptions.

The FAQ also provides a limited number of clarifications on the interpretation of the first set of the ESRS.

The FAQ have been issued in the form of a draft Commission Notice and therefore may be subject to change before final adoption by the European Commission.

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

EFRAG publishes new ESRS Q&A

Separately, on 26 July 2024, EFRAG released a new set of technical explanations provided to assist stakeholders in the implementation of the ESRS.

This set of explanations comprises 23 new technical explanations provided in response to questions received by EFRAG as well as 70 other explanations previously released between January 2024 and May 2024 .

A copy of the set of technical set of explanations is available **here**

ESMA publishes final report on guidelines on enforcement of sustainability information

On 5 July 2024, ESMA published its final report on guidelines on enforcement of sustainability information **(Guidelines)** alongside a public statement on the first application of the ESRS.

Alongside this, ESMA also issued a public statement on the first application of the ESRS in which it identifies guidance on the CSRD already available or under development by the European Commission and highlights key areas of attention upon first application of the ESRS (**Statement).**

Under the CSRD, ESMA is mandated to issue guidelines on the supervision of sustainability reporting by the national competent authorities in EU Member States in order to build convergence on supervisory practices on sustainability reporting across the EU.

The Guidelines apply to all EU national competent authorities responsible for supervising the publication of sustainability-related information by in-scope companies under the CSRD and Article 8 of the Taxonomy Regulation.

A copy of the Guidelines and the Statement are available **here**

4.7 EU Corporate Sustainability Due Diligence Directive is published in the Official Journal

On 5 July 2024, the EU Corporate Sustainability Due Diligence Directive (**CSDDD)** was published in the Official Journal of the European Union and must be transposed into national law by all EU Member States by 26 July 2026.

It will begin to apply on a phased basis over a period of three years with the first suite of in-scope companies[5] being required to comply with its provisions from 26 July 2027.

The CSDDD will require in-scope firms to conduct due diligence to identify actual and potential human rights and environmental impact of the company's own operations, that of its subsidiaries and also certain business partners in its value chain. Such companies are also required to take steps to prevent, mitigate or minimise the extent of such impacts and to assess the effectiveness of any such measures adopted.

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

Key Action Points	Fund management companies should assess whether they fall within the scope of the CSDDD and if so, initiate a project implementation plan to assess what steps will need to be taken to comply with its provisions by the applicable deadline.

5. ELTIF

5.1 European Commission adopts finalised Level 2 RTS under the ELTIF Framework

On 19 July 2024, the European Commission adopted a finalised set of RTS which contain technical measures on various aspects of the revised ELTIF framework.

Measures applicable to open-ended ELTIFs

- The European Commission has provided two different calculation methodologies which may be used by an AIFM to calculate the maximum percentage of liquid assets which can be redeemed on a given dealing day by an open-ended ELTIF. The first of these calculation methodologies is based on the redemption frequency and applicable notice period while the second methodology is based on the redemption frequency and minimum percentage of liquid assets that must be maintained by the ELTIF on an ongoing basis.
- It also confirms in the RTS that a mandatory minimum holding period is not required for an open-ended ELTIF. However, if such a minimum holding period is applied by the AIFM, it should satisfy the criteria set down in the finalised rules.
- The RTS also set down prescriptive information that must be provided by the AIFM to the ELTIF's national competent authority on the redemption arrangements for that ELTIF at the time of authorisation of the ELTIF. Any material changes to the information provided to the NCA at authorisation must be notified to the NCA at least 1 month in advance where possible.

Other measures addressed in the RTS

The RTS also finalise measures relating to a number of other topics, including:

- the rules applicable to the matching mechanism provided for under the revised ELTIF framework under which transfer requests of shares of an ELTIF from an exiting investor can be "matched" with transfer requests by potential investors.
- the circumstances in which the use of financial derivative instruments for hedging purposes are considered to solely serve the purpose of hedging the risks inherent to other investments of the ELTIF.
- the prescriptive rules on the specific costs which are associated with investing in an ELTIF which must be disclosed to potential investors.

The application date of the RTS, subject to any objections being raised by the European Parliament or the Council of the EU during the three-month scrutiny period, is expected to be towards the end of October 2024.

[5] This includes EU companies with an average of 5,000 employees and €1.5nm in annual turnover.

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

For a detailed analysis of the RTS, please refer to our briefing on the topic which is available **here.**

A copy of the Dillon Eustace "Key Features of an Irish ELTIF" publication is available **here.**

6. CROSS-BORDER DISTRIBUTION FRAMEWORK

6.1 Publication of Policy Statement and related guidance on the operation of the UK's Overseas Funds Regime by the UK FCA

On 17 July 2024, the UK FCA issued its Policy Statement PS24/7 "Implementing the Overseas Fund Regime – Feedback to CP23/26 and final rules" in which it set down its rules for eligible funds to apply for recognition under its overseas fund regime (**OFR).**

This follows the publication of details by the FCA of the landing slots for operators of funds in the Temporary Marketing Permissions Regime (**TMPR**) to transition to the OFR on 5th July 2024. Landing slots have been allocated alphabetically by fund operator name, with each landing slot providing a window of 3 months for the fund operator to complete all applications for its TMPR funds.

On 12 August 2024, the UK FCA published further guidance on the operation of the OFR on its website, including a "How-to" guide which sets out instructions on how UCITS management companies may register for the FCA Connect system in preparation to make application for recognition of EEA UCITS schemes for which they are responsible.

Together, these updates provide further clarity on how and when overseas UCITS will transition from the TMPR into OFR and the requirements which will apply for applications for recognition under the OFR and on an ongoing basis thereafter.

On 13 September 2024, the Central Bank published guidance on how any amendments to the fund documentation required under the OFR rules may be submitted to the Central Bank, noting that Irish UCITS may avail of one of the following options:

- The relevant disclosures are added to a UK country supplement and field via the Central Bank Portal using the "UCITS/AIF Country Supplement" Request Change; or
- If the relevant disclosures are being added to the main body of the UCITS prospectus, that revised prospectus must be submitted via the Central Bank Portal using the CITS/RIAIF: Prospectus/Supplement review - No new sub-funds" Request Change. The Central Bank has confirmed that this will be subject to a "lengthier and more detailed review process" than that which will be applied for UCITS using a UK country supplement".

The FCA web-based guidance on the OFR is available **here.**

For a detailed overview of the operation of the OFR, please refer to our recent briefings on the topic which are available **here** and **here.**

The Central Bank guidance on the implementation of the OFR is available **here.**

Key Action Points	Fund management companies which manage UCITS which are marketed to retail investors in the UK should familiarise themselves with the OFR regime and applicable deadlines for filing of applications with the FCA and implement an appropriate framework to ensure compliance with both the initial and ongoing obligations introduced under that regime.

7. EMIR & SFTR

7.1 European Commission requests advice on fees for validation of pro-forma models (initial margin)

On 31 July 2024, the European Commission published a provisional request to the EBA for technical advice on a possible delegated Act specifying the method for determining the amount and the modalities of payment of fees for validation of pro-forma models. These fees are to be paid by financial and non-financial counterparties requiring the validation of pro-forma models under the EMIR 3.0 proposal[1]. The request is provisional since EMIR 3.0 has not yet entered into force. The provisional request asks the EBA to deliver its technical advice by 30 June 2025.

The provisional request can be found **here.**

7.2 Joint Trade Association Issues Statement on EMIR 3.0 Effective Implementation Dates

On 23 September 2024, ISDA, AIMA, EBF and EFAMA (Joint Trade Association) issued a letter calling on the European Commission and the ESAs to publish a communication clarifying that market participants are not required to implement EMIR 3.0 Level 1 provisions prior to the date of application of the associated Level 2 RTS.

It is expected that the EMIR 3.0 Level 1 provisions could be adopted and published in the Official Journal of the EU before the end of 2024. Certain of the provisions of EMIR 3.0 will come into force 20 days after such publication. This means that certain of the provisions, such as the new reporting requirements, will technically be in force before the associated Level 2 RTS have been published/ come into effect.

The Joint Trade Association express their views that firms should not be expected to implement the EMIR 3.0 requirements twice, first to comply with the Level 1 requirements and again to apply with the Level 2 RTS once they become applicable. The Joint Trade Association claims that the requirements as they stand would impose disproportionate and unnecessary costs with few benefits, along with an uncoordinated and inconsistent manner of implementation. They seek clarification from the European Commission and the ESAs on this issue as soon as possible and well in advance of the entry into force of EMIR 3.0.

The letter can be found **here.**

8. DATA PROTECTION

8.1 European Commission launches call for evidence on first review of EU-US Data Privacy Framework

On 9 August 2024, the European Commission launched a call for evidence seeking the views of stakeholders on any relevant aspect of the functioning of the EU-US Data Privacy Framework (EU-US DPF). Having launched in July 2023 with the aim of ensuring safe and trusted EU-US data flows, the EU-US DPF implemented the following changes:

- Introduction of new binding safeguards to address concerns raised by the European Court of Justice
- Limitation of access to EU data by US intelligence services to what is necessary and proportionate
- Establishment of a Data Protection Review Court (DPRC) for EU individuals.

[1] Proposed regulation which intends to amend Regulations (EU) No 648/2012 (EMIR), (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets, as well as the proposed directive of the European Parliament and of the Council amending Directives 2009/65/EU, 2013/36/EU and (EU) 2019/2034 as regards the treatment of concentration risk towards central counterparties and the counterparty risk on centrally cleared derivative transactions

Under Article 45(4) of the GDPR6 the European Commission must produce a report assessing the effectiveness of the EU-US DPF one year after it has entered into force. This report is then submitted to the European Parliament and Council of the EU and made publicly available.

The call for evidence monitors the continued provision of adequate protection for the personal data of EU individuals transferred to the US.

The feedback window closed on 6 September 2024.

The Call for Evidence is available **here.**

8.2 EU-US Data Privacy Framework-FAQ Document for European Individuals

On 16 July 2024, the European Data Protection Board (EDPB) adopted a FAQ document for European individuals relating to the EU-US Data Privacy Framework (EU-US DPF) in place since July 2023. The EU-US DPF applies to any type of personal data transferred from the EEA to the US, including data processed for commercial or health purposes, and human resources data collected in the context of an employment relationship.

The FAQ document outlines how EU individuals benefit from the DPF. These include the right to be informed of such a transfer and its purpose, the right to access personal data and the right to correct or delete any incorrect or unlawfully handled data. A Data Privacy Framework List is provided on the US Department of Commerce website to check whether a US company has a valid certification under the EU-US DPF.

In cases where an individual believes that their rights under the EU-US DPF have been violated, or where a company in the US has violated its rights, the FAQs provide information about how to lodge a complaint with a national data protection authority.

The Data Privacy Framework List can be found **here**.

The EU-US Data Privacy Framework Principles, issued by the US Department of Commerce, can be found **here**.

The EDPB FAQ document can be found **here**.

9. MACROPRUDENTIAL POLICY DEVELOPMENTS

9.1 Central Bank publishes feedback statement on Discussion Paper

On 23 July 2024, the Central Bank published a feedback statement to the discussion paper that it had published in July 2023 on an approach to macroprudential policy for investment funds. (Feedback Statement).

In the Feedback Statement, the Central Bank provides its response to written feedback it received to its discussion paper.

It also notes:

- that a regulatory focus on specific cohorts of funds and the systemic risk they can generate is required in order to mitigate against spillover effects resulting from many managers, although acting individually, seeking to sell assets in stressed market conditions.

[6] (EU) 2016/679

- that any framework introduced to address the systemic risk posed by specific cohorts of funds must be bespoke and should not simply be an application of the existing macroprudential framework for banks to the funds sector.

- the importance of international coordination in developing any such macroprudential framework in order to ensure a high degree of consistency internationally, including a reciprocation framework.

- that work on developing a macroprudential framework for the fund sector will remain a priority for it over the years ahead, working both with international peers and through engagement with the funds sector domestically.

A copy of the Feedback Statement is accessible from **here.**

10. DORA

10.1 ESAs publish second batch of policy materials under DORA

On 17 July 2024, the Joint Committee of the ESAs published their second batch of policy materials under DORA within the so-called "level 2" rules. Most of the first batch of policy materials within the level 2 rules had been finalised in January 2024. The second batch consists of the following:

- Final report on draft regulatory technical standards (RTS) and implementing technical standards (ITS) on the content, format, templates and timelines for reporting major information and communication technology (ICT) related incidents and significant cyber threats under Article 20 of DORA. Link can be found **here.**

- Final report on draft RTS on the harmonisation of conditions enabling the conduct of the oversight activities under Article 41(1)(c) of DORA. These RTS relate to the criteria for determining the composition of the joint examination team (JET). Link can be found **here.**

- Final report on draft RTS specifying elements related to threat-led penetration tests (TLPT) under Article 26(11) of DORA. Link can be found **here.**

- Final report on joint guidelines on the estimation of aggregated annual costs and losses caused by major ICT-related incidents under Article 11(11) of DORA. Link can be found **here.**

- Final report on joint guidelines on the oversight co-operation and information exchange between the ESAs and the competent authorities under Article 32(7) of DORA. Link can be found **here.**

The guidelines have been adopted by the Boards of Supervisors of the three ESAs (EBA, EIOPA and ESMA) and the final draft technical standards have been submitted to the European Commission for adoption. The expected date of application of the technical standards and guidelines is 17 January 2025.

The press release relating to the publication can be found **here.**

10.2 ESAs publish final report on RTS on subcontracting of critical or important functions

On 26 July 2024, the Joint Committee of the ESAs published its final report on draft RTS to specify the elements a financial entity needs to determine and assess when sub-contracting ICT services supporting critical or important functions, as mandated by Article 30(5) of DORA.

The RTS addresses requirements for when the use of sub-contracted ICT services supporting critical or important functions (or material parts of such functions) by ICT third-party service providers is permitted by financial entities. The revised RTS helpfully clarifies that financial entities are expected to focus on subcontractors that "*effectively underpin*" the ICT service supporting critical or important functions.

The consultation paper can be found **here.**

The EBA press release can be found **here.**

The final report can be found **here**.

11. MISCELLANEOUS

11.1 Companies Act (Corporate Governance, Enforcement and Regulatory Provisions) Bill

On 24 July 2024, the Companies (Corporate Governance, Enforcement and Regulatory Provisions) Bill was published by the Department of Enterprise, Trade and Employment with its stated policy objective being to enhance and amend the legislative framework provided by the Companies Act 2014 (**Companies Act**) in the areas of governance, administration, insolvency, enforcement, and supervision (**Bill**) .

Of particular interest to fund management companies and Irish domiciled investment funds are:

- the provisions giving companies the option to hold general meetings either partially or wholly by the use of electronic communications where this is not expressly prohibited under the company's constitutive rules and subject to certain specific requirements set down in the Bill, including allowing shareholders to participate in the meeting via electronic means; and

- providing for flexibility in the execution of documents containing the company seal so that a company seal and the necessary signatures can be on separate documents which can then be counted as one single document for the purposes of the Companies Act.

The Bill is currently being considered by Dail Eireann and will then move to Seanad Eireann for its consideration and is expected to be enacted shortly.

This Bill was published by the Department of Enterprise, Trade and Employment on 24 July 2024 together with an Explanatory Memorandum, and is expected to progress swiftly.

A copy of the Bill as initiated in Dail Eireann is accessible **here**.

A copy of the Explanatory Memorandum of the Bill is accessible **here**.

11.2 ESAs announce implementation of new EU systemic cyber incident co-ordination framework

On 17 July 2024, the ESAs announced plans to establish a framework to strengthen co-ordination in response to systemic cyber incidents, referred to as the EU systemic cyber incident co-ordination framework (EU-SCICF). This follows on from a recommendation from the European Systemic Risk Board (ESRB) in January 2022 that the ESAs should expand upon their role in DORA and develop the EU-SCICF on a gradual basis.

The new framework aims to facilitate an effective financial sector response to cyber incidents which pose a risk to financial stability.

Participating members will be alerted and will share information on potential systemic cyber incidents or threats. The EU-SCICF will serve as forum for relevant authorities to communicate and co-ordinate on any necessary action and on the tools required to counter the crisis from a macroprudential perspective.

Over the coming months, the ESAs will establish the following entities to implement the framework:

- **The EU-SCICF Secretariat:** supporting the functioning of the framework.
- **The EU-SCICF Forum:** working on testing and maturing the functioning of the framework.
- **The EU-SCICF Crisis Co-ordination:** facilitating the co-ordination of actions by the participating authorities when a crisis arises.

The ESAs will report any legal or operational hurdles encountered in the initial set up to the European Commission. Further development of the framework will depend on the findings in that report, other measures taken by the Commission and the availability of resources.

The ESA press release can be found **here.**

A factsheet providing an overview of the EU-SCICF can be found **here**.

Contact Us

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