



Investment Firms

Quarterly Legal and Regulatory Update

Period covered: 1 July 2024 – 30 September 2024

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1. MIFID II

1.1 ESMA consults on equity transparency measures under MiFIR II/ MiFID III

On 10 July 2024, the European Securities and Markets Authority (**ESMA**) published a consultation paper containing certain draft regulatory technical standards (**RTS**) measures relating to the amendments to MiFIR¹ and the MiFID II².

The consultation covers proposals for:

- the amendment of the level two provisions³ specifying the requirements on equity transparency, covering technical advice to the Commission and amendments to the RTS on equity transparency (sections 3 and 4);
- a new implementing technical standard (**ITS**) on the content and format of the systematic internaliser (**SI**) notification (section 5);
- the amendment of the RTS specifying the volume cap⁴ (section 6);
- the amendments of the RTS specifying organisational requirements for trading venues in order to integrate the new empowerment on circuit breakers and reflecting the changes stemming from DORA⁵(section 7);
- a new RTS on input/output data for the equity consolidated tape provider (**CTP**) (section 8); and
- proposal on flags for post-trade transparency for the transparency requirements for non-equity instruments, notably bonds (section 9).

ESMA will prepare a final report and submit to the European Commission the technical advice and the draft technical standards for RTS 1 and Sections 3 to 9 in December 2024, and the remaining mandates in March 2025.

The press release can be viewed [here](#).

The consultation paper can be viewed [here](#).

1.2 ESMA consults on RTS supplementing firms' order execution policies

On 16 July 2024, ESMA published a consultation paper on RTS supplementing MiFID III⁶ specifying the criteria for establishing and assessing the effectiveness of investment firms' order execution policies.

Article 1(4)(e) of MiFID III adds a new paragraph 10 to Article 27 of the MiFID II Directive, requiring ESMA to develop RTS on the criteria for establishing and assessing the effectiveness of investment firms' order execution policies.

In the consultation, ESMA is seeking input on:

- The establishment of an investment firm's order execution policy. This includes the classification of financial instruments in which firms execute client orders and the initial selection of venues for the order execution policy.
- The investment firm's procedures to monitor and regularly assess the effectiveness of its order execution arrangements and order execution policy.
- The investment firm's execution of client orders through own account dealing.
- How an investment firm deals with client instructions.

¹ Markets in Financial Instruments Regulations II (EU) No. 2024/791.

² Directive (EU) 2024/790 of the European Parliament and of the Council of 28 February 2024 amending Directive 2014/65/EU on markets in financial instruments

³ Commission Delegated Regulation 2017/587 (**RTS 1**) and Commission Delegated Regulation 2017/567

⁴ Commission Delegated Regulation 2017/577 (**RTS 3**)

⁵ Commission Delegated Regulation 2017/584 (**RTS 7**)

⁶ Directive 2014/65/EU.

The consultation closes to responses on 16 October 2024. ESMA will consider the consultation feedback received. It expects to publish a final report and submit the final draft RTS to the European Commission for endorsement by 29 December 2024.

The press release can be viewed [here](#).

The consultation paper can be viewed [here](#).

1.3 ESMA publishes statement on transition to new post-trade transparency of OTC-transactions regime

On 22 July 2024, ESMA published a public statement on the transition to the new regime for post-trade transparency of OTC-transactions in the light of MiFIR II.

The statement complements ESMA's March 2024 statement and aims to provide further practical guidance.

Under Article 21a of MiFIR II, when a designated publishing entity (**DPE**) to an investment firm is party to a transaction, it is responsible for making the transaction public through an approved publication arrangement (**APA**). By 29 September 2024, ESMA is required to establish a public register of all DPEs, specifying their identity and the classes of financial instruments for which they act as DPEs. However, MiFIR II does not provide for a transitional regime for applying the DPE regime for post-trade transparency.

To ensure an orderly transition to the DPE regime, ESMA and the national competent authorities (**NCA**s) have agreed that ESMA will start publishing the DPE register on 29 September 2024, and the new DPE regime for post-trade transparency will become fully operational on 3 February 2025.

Investment firms intending to become DPEs are encouraged to register with their NCA, indicating the classes of financial instruments for which they wish to take up this function, along with other identifying information requested by the NCAs. NCAs will transmit the information regarding the DPEs to ESMA so that the information is included in the future DPE public register.

At the end of September 2024, ESMA will publish the list of DPEs based on the information received.

The public statement can be viewed [here](#).

2. EMIR & SFTR

2.1 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 proposals⁷. 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](#).

2.2 Joint Trade Association issues statement on EMIR 3.0 effective implementation dates

⁷ 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

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 is of the view 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](#).

3. CENTRAL BANK OF IRELAND

3.1 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). It addresses both the Conduct Standards and SEAR.

Conduct Standards

These FAQ address the following:

- 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.

SEAR

These FAQ address the following:

- Whether the Central Bank will provide any guidance on the allocation of Prescribed Responsibilities to specific PCF role holders.
- The Central Bank's expectations with regard to the allocation of PR20.
- The Central Bank's expectations with regard to the extent of the application, and the allocation, of PR34.

SEAR took effect on 1 July 2024 for credit institutions, certain investment firms, certain insurance undertakings as well as incoming branches of the forgoing.

A copy of the FAQ is accessible [here](#).

3.2 Senior Executive Accountability Regime (SEAR) - Systems "How To" Guide

On 1 July 2024 the CBI published the “Senior Executive Accountability Regime (SEAR) Systems “How To” Guide”. The Guide aims to support regulated financial service providers (**RFSPs**) subject to the SEAR Regulations when submitting Statement of Responsibilities and Management Responsibilities Maps through the CBI portal or the European Central Bank (**ECB**) Information Management System (**IMAS**) Portal.

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

3.3 Guidance on breach and incident reporting for MiFID firms

On 27 August 2024, the CBI published updated guidelines for all MiFID firms on the reporting of breaches and incidents. The Form template is set out in the Annex to the guidelines and is composed of the following four sections:

- **Section A:** Breach
- **Section B:** Potential Future Breach
- **Section C:** Operational Incident
- **Section D:** Further Information

The scope of the reporting of breaches is addressed in Regulation 4(2) of the Central Bank Investment Firm Regulations⁸ and is used for the reporting of all breaches, except for breaches relating to Client Assets, which are subject to the client asset requirements/ investor money requirements in Part 6 of the Central Bank Investment Firm Regulations.

As soon as a firm becomes aware of an incident, they should download the Form and notify the CBI by submitting the Form through the CBI portal.

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

4. SUSTAINABILITY

4.1 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.

⁸ Regulation 4(2) of S.I. No. 10/2023 - Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2023

- 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](#).

4.2 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 2025⁹. 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](#).

4.3 CSRD Round-Up

European Commission publishes FAQ on CSRD

⁹ 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

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](#).

4.1 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 companies¹⁰ 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

¹⁰ This includes EU companies with an average of 5,000 employees and €1.5bn in annual turnover.

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](#).

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

On 25 July 2024, the European Supervisory Authorities (**ESAs**) 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 financial market participant 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 the financial market participant delegates management; or (ii) the fund in question is a passively managed fund tracking an index.
- Whether investment in another financial product 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 financial products falling within the scope of Article 9 of the SFDR.
- The categorisation of financial products 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 framework¹¹.
- 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](#).

5. DORA

5.1 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 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](#).

¹¹ Commission Delegated Regulation (EU) 2020/1818

- 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](#).

5.2 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](#).

6. DATA PROTECTION

6.1 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.

Under Article 45(4) of the GDPR¹² 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](#).

6.2 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](#).

7. MISCELLANEOUS

7.1 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:

¹² (EU) 2016/679

- **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](#).

7.2 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**).

The following may be of particular interest to investment firms:

- 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](#).

If you have any questions in relation to the content of this update, to request copies of our most recent newsletters, briefings or articles, or if you wish to be included on our mailing list going forward, please contact any of the team members below.

Keith Waine

E-mail: keith.waine@dilloneustace.ie

Tel : + 353 1 673 1822

Karen Jennings

E-mail: karen.jennings@dilloneustace.ie

Tel : + 353 1 673 1810

Caoimhe Costello

E-mail: Caoimhe.Costello@dilloneustace.ie

Tel : + 353 1 673 1856

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