



## Insurance

# Quarterly Legal and Regulatory Update

Period covered: 1 October 2023 – 31 December 2023

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## 1. SOLVENCY II

### 1.1 Solvency II Directive review: Provisional political agreement reached on proposed Solvency II amending Directive

On 13 December 2023, the Council of the European Union (**Council of the EU**) and the European Parliament issued press releases to announce that a provisional political agreement has been reached between the European Parliament and the Council of the EU on the proposed Directive amending the Solvency II Directive (2021/0295 (COD) (**Proposed Directive**)) and on the proposed Insurance Recovery and Resolution Directive (2021/0296/COD) (**IRR**D).

Key developments arising from the provisional political agreement reached in respect of the Proposed Directive include:

- Improvements to the long-term guarantees measures to make them more risk sensitive;
- Insurance firms will be required to increase the extent to which they take sustainability-related risks into account and to report more on such risks to enhance policyholders' understanding of a firm's green credentials;
- More simplified and proportionate rules to reduce the administrative burden on small and non-complex insurance companies;
- Strengthened coordination between National Competent Authorities (**NCA**s) regarding cross-border activities;
- Increased consumer protection for policyholders when buying insurance in another EU member state; and
- Assignment of new tasks to the European Insurance and Occupational Pensions Authority (**EIOPA**) including the development of secondary legislation to strengthen member states' implementation of the Proposed Directive.

Political agreement was also reached on the proposed IRRD. The aim of the proposed IRRD is to ensure that insurers and the relevant authorities in the EU are better prepared in cases of significant financial troubles. The provisional agreement will introduce a new harmonised regime at European level for resolving insurers in an orderly manner.

The texts of the provisional agreements will now be finalised and presented to member states' representatives and the European Parliament for approval. If approved, the Council of the EU and the Parliament will have to formally adopt the texts.

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

The European Parliament's press release can be accessed [here](#).

## 2. EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY (EIOPA)

### 2.1 EIOPA report on impact of inflation on insurance industry

On 5 October 2023, EIOPA published a report on how the current inflationary environment impacts insurers in Europe (**Inflation Report**).

The Inflation Report explores the effect that the higher-than-expected inflation and interest rates have had on the insurance sector and potential future risks and vulnerabilities.

The Inflation Report explores the varying implications of high inflation and interest rates for insurers' capital levels, profitability, and liquidity positions, as well as the implications for consumers.

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

EIOPA's press release can be accessed [here](#).

## 2.2 EIOPA consults on the supervision of captive (re)insurers

On 6 October 2023, EIOPA launched a public consultation on its draft Opinion regarding the supervision of captive (re)insurers (**Opinion**) and its related impact assessment.

The Opinion outlines the supervisory expectations of competent authorities in respect of captive (re)insurers on matters such as intra-group transactions (focusing on cash pooling), the consistent application of the prudent person principle in the context of investment risk management as well as governance-related aspects of key functions and outsourcing requirements.

The public consultation on the Opinion ended on 5 January 2024.

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

EIOPA's press release can be accessed [here](#).

## 2.3 EIOPA unveils its digital strategy for 2024 - 2026

On 12 October 2023, EIOPA published its digital strategy to support consumers, markets and the supervisory community through digital transformation (**Digital Strategy**).

In its Digital Strategy, EIOPA outlines its approach to the digital transformation of the insurance sector over the next three years. EIOPA has identified three main long-term priorities in its Digital Strategy, including:

- Ensuring innovation is aligned with the best interests of consumers, considering financial inclusion and digital ethics;
- Enhancing the supervisory capabilities of EIOPA and NCAs by maintaining the standard of efficient prudential and conduct supervision while adapting to and using technological innovation; and
- Strengthening business model sustainability and resilience of all insurance market players.

The Digital Strategy can be accessed [here](#).

EIOPA's press release can be accessed [here](#).

## 2.4 EIOPA consults on greenwashing

On 12 December 2023, EIOPA published a Consultation Paper on its Opinion on sustainability claims and greenwashing in the insurance and pensions sectors (**Greenwashing Consultation Paper**).

The Greenwashing Consultation Paper outlines EIOPA's proposed approach to addressing greenwashing in the insurance and occupational pensions sectors which includes four principles to be considered by insurance providers when making sustainability claims. The four principles proposed by EIOPA relate to accuracy of claims, disclosure of claims in a timely manner, substantiation of sustainability claims, and accessibility to sustainability claims by targeted stakeholders.

EIOPA provides further examples of good and bad practices for each of the four proposed principles and suggests that NCAs monitor providers' adherence to the principles outlined in the Greenwashing Consultation Paper.

EIOPA is welcoming comments on the Greenwashing Consultation Paper via the [EU Survey webpage](#) until 12 March 2024.

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

EIOPA's press release can be accessed [here](#).

## 2.5 EIOPA consults on prudential treatment of sustainability risks

On 13 December 2023, EIOPA published a Consultation Paper on the prudential treatment of sustainability risks (**Sustainability Risks Consultation Paper**).

The Sustainability Risks Consultation Paper addresses the following areas related to the potential treatment of sustainability under the Solvency II Directive ((2009/138/EC):

- Market risks of assets and transition risk exposures;
- Non-life underwriting risks and climate change adaptation; and
- Social objectives and social risks from a prudential perspective.

The Sustainability Risks Consultation Paper is based on the public feedback received to EIOPA's Discussion paper previously published, in December 2022, on assessing the prudential treatment of insurers' sustainable assets and activities (**2022 Discussion Paper**), together with feedback received from both the European Platform on Sustainable Finance and the European Banking Authority (**EBA**).

EIOPA is welcoming responses to the Sustainability Risks Consultation Paper until 22 March 2024 which can be submitted by using the [EU Survey Tool](#).

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

EIOPA's related 2022 Discussion Paper can be accessed [here](#).

## 2.6 EIOPA sets out its strategic priorities for 2024 - 2026

On 19 December 2023, EIOPA published its "Final Single Programming Document 2024 – 2026" which sets out EIOPA's strategic priorities and work programme for the period 2024-2026, including EIOPA's Annual Work Programme for 2024.

EIOPA has outlined the following strategic priorities as its focus between 2024 and 2026:

- **Sustainable finance:** the integration of sustainable finance considerations across all areas of work including the building up of sustainable insurance by addressing protection gaps for the benefit of EU citizens and businesses.
- **Digital transformation:** supporting the supervisory community and industry through digital transformation, with a focus on implementing the Digital Operational Resilience Act (Regulation (EU) 2022/2554) (**DORA**), the Artificial Intelligence Act and the European Single Access Point (**ESAP**).
- **Supervision:** in light of increased cross-border engagement, enhancing the quality and effectiveness of supervision including the revision of supervisory convergence materials considering the Solvency II Directive review.
- **Policy:** ensuring technically sound prudential and conduct of business policy to maintain the integrity of the insurance regulatory framework as the review of Solvency II advances.
- **Risks to financial stability:** identifying, monitoring and reporting on risks and vulnerabilities in the insurance sector and promoting preventative policies and mitigating measures including work on enhancing the risk assessment toolkit as well as the proposed Insurance Recovery and Resolution Directive.
- **Governance:** develop EIOPA's strong corporate culture, focusing on effective recruitment, management and development of EIOPA's human capital to serve as a model EU supervisory authority and enhance its position as an attractive employer.

A copy of the Final Single Programming Document 2024 – 2026 can be accessed [here](#).

## 2.7 EIOPA publishes 2024 supervisory convergence plan

On 21 December 2023, EIOPA published its Supervisory Convergence Plan for 2024 which outlines EIOPA's priorities to improve supervisory convergence during 2024.

EIOPA's Supervisory Convergence Plan for 2024 focuses on three priority areas:

- The practical implementation of the common supervisory culture and the development of supervisory convergence tools. For instance, EIOPA will review the Solvency II guidelines on the supervisory review process and will take practical measures to advance the value for money of insurance products.
- The risks to the internal market and to the level playing field which may lead to supervisory arbitrage involving, among other initiatives, continued collaboration with the EBA and European Securities and Markets Authority (**ESMA**) to establish a cross sectoral system for information exchange relating to assessing fitness and propriety of key function holders.
- Supervision of emerging risks to include implementing the framework mandated by DORA.

EIOPA's Supervisory Convergence Plan for 2024 can be accessed [here](#).

## 3. PRIIPS

### 3.1 ESAs publishes updated PRIIPS KID Q&A.

In a revised edition of their PRIIPS KID Q&A published in December 2023, the European Supervisory Authorities (**ESAs**) have added new Q&As to the following sections:

- General topics;
- Market Risk Assessment (Product Categories);
- Performance Scenarios;
- Multi-Options Products; and
- Investment Funds.

A copy of the revised ESA PRIIPS KID Q&A is available [here](#).

## 4. CENTRAL BANK OF IRELAND

### 4.1 Central Bank publishes Consultation Paper 156 on its approach to innovation engagement in financial services

On 8 November 2023, the Central Bank of Ireland (**Central Bank**) published consultation paper 156 on its approach to innovation engagement in financial services.

In it, the Central Bank outlines how it engages today on innovation, the enhancements it plans to make to deepen its current model of engagement and its proposals to introduce an Innovation Sandbox.

The consultation closes on 8 February 2024.

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

## 4.2 Notice of Intention on recognition of sustainability knowledge and competence in the MCC

On 23 November 2023, the Central Bank published a Notice of Intention on the Recognition of sustainability knowledge and competence in the Minimum Competency Code 2017 (**Notice of Intention**).

The Notice of Intention provides that the Central Bank will update Appendix 3 of the Minimum Competency Code (**MCC**) which sets out the minimum competencies for retail financial products and will recognise sustainability training for Continuing Professional Development (**CPD**) hours where such training is directly relevant to a person's role.

Appendix 3 of the MCC will be updated to include competencies concerned with sustainability for retail financial products and incorporate the suitability requirements as set out in MiFID II and the Insurance Distribution Directive (**IDD**).

The Central Bank will publish an Addendum to the MCC to reflect the changes addressed in the Notice of Intention, and such changes will be effective from 1 January 2025.

A copy of the Notice of Intention can be accessed [here](#).

## 4.3 Central Bank publishes quarterly Insurance Newsletter

On 13 December 2023, the Central Bank published its quarterly Insurance Newsletter (**Newsletter**). The Newsletter aims to provide relevant news and insights to key stakeholders in the insurance sector.

The Newsletter addresses the following topics:

- Risk Environment & Supervisory Priorities for 2024;
- Notifications of changes to Business Plans;
- Individual Accountability Framework;
- EIOPA's Consultation on the supervision of captive (re)insurance undertakings;
- EIOPA's strategic priorities for 2024 – 2026;
- Materiality assessments on climate change risk; and
- Publication of consultation paper CP156 regarding innovation engagement.

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

## 5. CENTRAL BANK INDIVIDUAL ACCOUNTABILITY FRAMEWORK AND FITNESS & PROBITY REGIME

### 5.1 Central Bank publishes finalised implementing regulations and guidance on its Individual Accountability Framework

On 16 November 2023, the Central Bank published:

- Finalised guidance on its Individual Accountability Framework;
- Finalised draft regulations which are required to implement the changes to its Fitness & Probity (**F&P regime**) certification regime, the senior executive accountability regulation (**SEAR**) and the extension of the F&P regime to in-scope holding companies<sup>1</sup>; and
- Feedback statement on Consultation Paper 153 which issued in March 2023 and which provided industry stakeholders with the opportunity to provide feedback on the Central Bank's proposed approach to implementing its Individual Accountability Framework.

The Central Bank confirmed that the individual conduct standards will apply in full to all individuals performing PCF and CF roles in Irish regulated firms from 29 December 2023.

<sup>1</sup> These comprise holding companies established in the State of credit institutions, insurance undertakings and investment firms.

The Central Bank confirmed that for those firms falling within the scope of SEAR, independent non-executive directors (**INEDs**) and non-executive directors (**NEDs**) will not be required to comply with SEAR until 1 July 2025 (a one-year delay).

The Central Bank also confirmed that the extension of the F&P regime to in-scope holding companies includes the introduction of two new PCF roles namely HCPCF1 being the office of the chair of the holding company and HCPCF2 being the office of director of the holding company. The relevant regulations also create two CF roles, namely HCCF1 (being those persons who can exercise a significant influence on the conduct of the affairs of the holding company) and HCCF2 (being those persons who are involved in ensuring, controlling or monitoring compliance by a holding company with its relevant obligations).

- A more detailed overview of the finalised IAF regime is contained in provided in our briefing on the topic which is available [here](#).
- A copy of the finalised regulations introducing the new certification regime under the Central Bank's F&P regime is available [here](#).
- A copy of the finalised regulations which extend the F&P regime to certain Irish holding companies is available [here](#).
- Further information on the PCF and CF roles within in-scope holding companies is available [here](#).
- A copy of the draft finalised regulations giving full effect to the SEAR regime (awaiting publication on the Irish Statute Book) is available [here](#).
- A copy of the Central Bank's finalised guidance on the IAF framework is available [here](#).
- A copy of the Central Bank's feedback statement on its Consultation Paper 153 is available [here](#).

## 5.2 Central Bank publishes finalised Administrative Sanctions Procedures Guidelines

On 13 December 2023, the Central Bank published its finalised guidelines relating to its enhanced administrative sanctions procedure (**Finalised ASP Guidelines**) which has been introduced to give further effect to its Individual Accountability Framework under the Central Bank (Individual Accountability Framework) Act 2023 (**Act**). Under changes introduced by the Act, the Central Bank can now take direct enforcement against individuals performing PCF and CF roles in an Irish regulated financial services firm.

It also published its feedback statement to its Consultation Paper 154 in which it provides its response to feedback received from relevant stakeholders on its consultation on draft administrative sanctions procedure guidelines.

The Finalised ASP Guidelines came into force on 13 December 2023 and are available [here](#).

The Central Bank's feedback statement to Consultation Paper 154 is available [here](#).

A Dillon Eustace briefing providing an overview of the Finalised ASP Guidelines is available [here](#).

## 5.3 Central Bank publishes revised edition of Fitness & Probity Standards and related guidance and extends the list of PCF roles

### (A) Central Bank Fitness & Probity Standards

In December 2023, the Central Bank published a revised version of its fitness and probity standards which are issued under Section 50 of the Central Bank Reform Act 2010, replacing the previous standards which had been in place since 2014 (**Revised F&P Standards**).

The Revised F&P Standards amend the previous standards to take account of the fact that the F&P regime now applies to certain Irish holding companies. The Central Bank has also made certain changes to Section 4 of the standards which relates to the obligation to act honestly, ethically and with integrity.

A copy of the Revised F&P Standards is available [here](#).

## (B) Central Bank Guidance on Fitness and Probity Standards

The Central Bank has also updated its June 2018 guidance on the F&P regime to take account of the Revised F&P Standards which was most recently updated in June 2018 (**Revised F&P Guidance**).

The Revised F&P Guidance has been updated to address the changes introduced to the F&P regime as part of the introduction of the Central Bank's Individual Accountability Framework as well as clarifying the due diligence obligations imposed on regulated financial service providers in determining that an individual is fit and proper to perform the relevant role and addressing the extension of the F&P regime to in-scope holding companies.

A copy of the Revised F&P Guidance is available [here](#).

## (C) Extension of list of those performing PCF roles within Irish regulated financial services firms

On 20 December 2023, the Central Bank Reform Act 2010 (Sections 20 and 22) (Amendment) Regulations 2023 were published, coming into operation on 29 December 2023 (**Regulations**).

The Regulations introduce three new pre-approved controlled functions, namely:

- PCF-54 Head of Material Business Lines for Insurance Undertakings;
- PCF-55 Head of Material Business Lines for Investment Firms; and
- PCF 53 Head of Client Asset Oversight (applicable to Irish credit institutions only).

Both the PCF-54 and PCF-55 roles are allocated to individuals (in insurance undertakings and in investment firms, respectively) exercising significant influence over the performance of a material business line and the Amended PCF List provides qualitative criteria in this regard.

The Regulations also amend PCF-16 Branch Manager of branches established outside of the State in order to introduce a material threshold whereby the role only applies 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 regulated financial service provider.

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

Further information on the scope of the newly created PCF roles is available [here](#).

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

### 6.1 Central Bank's Updated Guidance on Beneficial Ownership Register of Certain Financial Vehicles

On 20 October 2023, the Central Bank published an updated guidance document (**2023 BOR Guidance**) on the Beneficial Ownership Register of Certain Financial Vehicles (**Register**).

The updates made within the 2023 BOR Guidance address:

- The European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) (Amendment) Regulations 2023 (S.I. No 308 of 2023) which amends the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 to provide that access requests by members of the public to the Register must meet a threshold of legitimate interest; and
- The replacement of the Central Bank's Online Reporting (**ONR**) System with the Central Bank Portal (**Portal**).

A copy of the 2023 BOR Guidance can be accessed [here](#)



## 6.2 FATF Public Consultation: Draft Risk-Based Guidance on Beneficial Ownership and Transparency of Legal Arrangements

On 31 October 2023, the Financial Action Task Force (**FATF**) launched a public consultation on draft risk-based guidance (**Draft Guidance**) on FATF recommendation 25 on beneficial ownership and transparency of legal arrangements. The Draft Guidance is intended to assist countries in implementing the revisions to FATF recommendation 25 that were agreed in February 2023.

The public consultation closed on 8 December 2023 and the FATF will consider the responses at its plenary meeting to be held in February 2024.

Information on the consultation is available [here](#).

## 6.3 Updating of EU list of high-risk countries to remove Cayman Islands and Jordan

The FATF plenary meeting in October 2023 concluded that Albania, the Cayman Islands, Jordan and Panama will no longer be subject to the FATF's increased monitoring process.

On 12 December 2023, the European Commission adopted a delegated regulation (**Delegated Regulation**) removing Cayman Islands and Jordan from the list of high-risk third countries with strategic AML and counter-terrorist financing (**CTF**) deficiencies (**High-Risk Third Country List**) which is contained at the Annex to Commission Delegated Regulation (EU) 2016/1675.

The Delegated Regulation will be submitted to the Council of the EU and the European Parliament for scrutiny and if neither institution objects, the Delegated Regulation will be effective 20 days following its publication in the Official Journal of the European Union (**Official Journal**).

Despite the FATF's removal of Albania and Panama from its list of jurisdictions under increased monitoring, the European Commission has not removed Albania or Panama from its High-Risk Third Country List.

A copy of the FATF publication from its October plenary meeting can be accessed [here](#).

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

## 6.4 EBA Guidelines on Policies and Controls for the Effective Management of ML/TF Risk Factors

From 3 November 2023, the EBA's guidelines on policies and controls for the effective management of money laundering and terrorist financing (**ML/TF**) risks when providing access to financial services (**Guidelines**) are effective. The Guidelines were published by the EBA on 31 March 2023.

The Guidelines address the steps institutions should take to facilitate access to financial services by those categories of customers which are particularly vulnerable to unwarranted "de-risking". The concept of "de-risking" refers to decisions made by credit and financial institutions to refuse to enter into, or to terminate, business relationships with individual customers or categories of customers associated with higher ML/TF risk.

The Guidelines:

- outline the steps that institutions should take when considering whether to refuse or terminate a business relationship with a customer based on AML/CFT compliance grounds;
- require that decisions to refuse a business relationship or to apply risk-mitigating measures must be proportionate and aligned with the principle of non-discrimination; and
- address the complaint mechanisms that institutions should adopt to ensure customers can make a complaint if they believe they have been treated unfairly.

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

## 6.5 EU List of Prominent Public Functions

On 10 November 2023, the European Union published a list (**List**) of prominent public functions at national level, at the level of international organisations and at the level of the European Union institutions and bodies in the Official Journal.

The List outlines the prominent public functions at EU member state level, at the level of international organisations and at the level of EU institutions and bodies. The List therefore provides clarity on classifications of politically exposed persons or PEPs within EU member states for the purposes of the Fourth Anti-Money Laundering Directive<sup>2</sup>.

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

## 6.6 Provisional Agreement reached on proposed Anti-Money Laundering Authority Regulation

On 13 December 2023, the Council of the EU published a press release to announce that a provisional political agreement (**Provisional Agreement**) has been reached between the Council of the EU and the European Parliament on the proposed Regulation (**AMLA Regulation**) establishing the Anti-Money Laundering Authority (**AMLA**).

The AMLA Regulation was published by the European Commission in 2021 as part of its AML reform package (**AML Reform Package**) and the interinstitutional negotiations between the Council of the EU, the European Parliament and the European Commission on the AML Reform Package have been ongoing since May 2023. In its press release, the Council of the EU note that the establishment of AMLA, as a European regulatory authority for countering money laundering and financing of terrorism, is the “centrepiece” of the AML Reform Package. The Provisional Agreement reached on the AMLA Regulation is therefore a welcomed development in the progression of the AML Reform Package.

The Provisional Agreement does not include a conclusion regarding the location of AMLA, the selection process for which is continuing to be negotiated between the Council of the EU and the European Parliament.

Negotiations between the Council of the EU and the European Parliament are also ongoing in respect of the wider AML Reform Package such as the proposed Regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (**AML Regulation**) (2021/0239(COD)) (also known as the **EU AML/CFT single rulebook**) and the proposed Sixth Anti-Money Laundering Directive (**MLD6**) (2021/0250(COD)). However, in the European Parliament’s press release concerning the Provisional Agreement, it outlines that provisional agreement has been reached on certain horizontal aspects of the broader AML Reform Package on matters such as whistleblowing reporting channels, cooperation between the FIUs and AMLA, and the circumvention of targeted financial sanctions.

The text of the Provisional Agreement still needs to be finalised and confirmed by the Committee of Permanent Representatives (**COREPER**). The text of the Provisional Agreement and the legal texts of the remaining elements of the AML Reform Package are expected to be prepared for formal adoption by the Council of the EU and the European Parliament in early 2024.

AMLA is expected to be operational in 2024 and its establishment will likely result in increased AML and CFT supervision, not only for Selected Entities, but for all firms as national supervisory authorities will be under increased scrutiny by AMLA and AMLA’s implementing or regulatory technical standards will be binding on all obliged entities, not just those directly supervised entities.

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

A copy of the European Parliament’s press release can be accessed [here](#).

<sup>2</sup> Directive (EU) 2015/849

For more information on the broader AML Reform Package proposed by the European Commission in 2021, please refer to our previous client briefing [here](#).

## 7. SUSTAINABILITY

### 7.1 European Commission publishes additional guidance on disclosure obligations arising under Article 8 of the Taxonomy Regulation

Under Article 8 of the Taxonomy Regulation (Regulation (EU) 2020/852), in-scope companies are required to report information on the Taxonomy-eligible and Taxonomy-aligned economic activities and assets in their annual financial statements in accordance with the specific requirements of Commission Delegated Regulation (EU) 2021/2178 (**Disclosures Delegated Act**).

On 20 October 2023, a Commission Notice which provides guidance to non-financial undertakings falling within the scope of Article 8 of the Taxonomy Regulation on the reporting of key performance indicators under the Disclosures Delegated Act was published in the Official Journal (**Commission Notice for Non-Financial Undertakings**).

On 21 December 2023, the European Commission published a draft Commission notice on the interpretation and implementation of certain provisions of delegated acts published under Article 8 of the Taxonomy Regulation (**Draft Commission Notice for Financial Undertakings**). The purpose of the Draft Commission Notice for Financial Undertakings is to provide specific interpretative and implementation guidance to financial undertakings falling within the scope of Article 8 of the Taxonomy Regulation on the reporting of their key performance indicators under the Disclosures Delegated Act.

A copy of the Commission Notice for Non-Financial Undertakings is available [here](#).

A copy of the Draft Commission Notice for Financial Undertakings is available [here](#).

### 7.2 Publication of Taxonomy Delegated Acts in the Official Journal and publication of related European Commission guidance

On 21 November 2023, Commission Delegated Regulation (EU) 2023/2486 (**EU Taxonomy Environmental Delegated Act**) and Commission Delegated Regulation (EU) 2023/2485 (**Amending EU Taxonomy Climate Delegated Act**) were published in the Official Journal.

The EU Taxonomy Environmental Delegated Act enters into force on 1 January 2024. This regulation sets down the technical screening criteria which must be satisfied in order for an economic activity to be deemed as contributing to the Taxonomy-related environmental objectives of (i) the sustainable use and protection of water and marine resources, (ii) the transition to a circular economy, (iii) to pollution prevention and control and (iv) the protection and restoration of biodiversity and ecosystems.

On the same date, certain provisions of the Amending EU Taxonomy Climate Delegated Act also enter into force. This regulation makes targeted amendments to the existing EU Taxonomy Climate Delegated Acts to expand on the economic activities contributing to climate change mitigation and climate change adaptation not yet covered by the EU Taxonomy framework, in particular the manufacturing and transport sectors.

Separately on 20 October 2023, a Commission Notice containing technical clarifications on the technical screening criteria set out in the existing EU Taxonomy Climate Delegated Act was published in the Official Journal (**Commission Notice**).

A copy of the EU Taxonomy Environmental Delegated Act is available [here](#).

A copy of the Amending EU Taxonomy Climate Delegated Act is available [here](#).

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

### 7.3 ESAs propose amendments to SFDR Level 2 Measures

On 4 December 2023, the ESAs published their final report containing proposed targeted amendments to Commission Delegated Regulation (EU) 2022/1288 which underpins the SFDR (**SFDR Level 2 Measures**). This followed a consultation process which had been carried out by the ESAs earlier in 2023.

The amendments proposed by the ESAs to the SFDR Level 2 Measures include the following;

- New financial product disclosure of greenhouse gas emission reduction targets;
- An extension of the social PAI indicators and other changes to the PAI disclosures framework;
- Enhanced disclosure of how sustainable investments comply with the “do not significantly harm” (“DNSH”) principle;
- Revision of the provisions for products with investment options such as multi-option products (**MOPs**); and
- Other technical changes including harmonised calculation of sustainable investments and a requirement to produce the disclosures in machine-readable format.

In order for the ESA’s proposed amendments to the SFDR Level 2 Measures to become law, they must now be considered by the European Commission who must decide whether or not to endorse such proposed changes within three months.

A copy of the ESA report containing their proposed amendments to the SFDR Level 2 Measures is available [here](#).

### 7.4 European Parliament and Council of the EU begin consideration of proposed regulatory framework for ESG rating providers

In June 2023, the European Commission adopted a legislative proposal setting down a proposed new regulatory framework governing the activities of ESG rating providers operating in the European Union (**ESG Rating Providers Proposal**).

The ESG Rating Providers Proposal is intended to improve the quality of ESG ratings by (i) improving the transparency of ESG ratings, their methodologies and their data sources by imposing specific transparency obligations on ESG rating providers and (ii) ensuring increased integrity of operations of ESG rating providers and the prevention of risks of conflicts of interest at ESG rating providers’ level.

The European Commission has proposed that all ESG rating providers which publicly disclose or distribute ESG ratings to regulated financial undertakings in the EU should be authorised and supervised by ESMA.

The ESG Rating Providers Proposal is currently being considered by both the European Parliament and the Council of the EU.

On 8 December 2023, the European Parliament published a report adopted by its Economic and Monetary Affairs Committee which contains ECON’s proposed negotiating position and suggested amendments to the ESG Rating Providers Proposal put forward by the European Commission.

The Council of the EU subsequently published a press release on 20 December 2023 confirming that it had also reached an agreement on its negotiating mandate on the ESG Ratings Providers Proposal.

Trilogue negotiations between the European Commission, the European Parliament and the Council of the EU on the ESG Rating Providers Proposal are expected to commence in January 2024.

A copy of the ESG Rating Providers Proposal put forward by the European Commission in June 2023 is available [here](#).

A copy of the revised legislative text published by the European Parliament is available [here](#).

A copy of the negotiating mandate published by the Council of the EU is available [here](#).

## 7.5 European Parliament and Council of EU reach provisional agreement on proposed Corporate Sustainability Due Diligence Directive

On 14 December 2023, the European Parliament and the Council of the EU announced that they had reached political agreement on the proposed Corporate Sustainability Due Diligence Directive (2022/0051 (COD)) (**CSDDD**).

The CSDDD will oblige large companies 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) and will apply not only to the relevant company's operations but also those of its subsidiaries and their value chains.

The finalised agreed text has not yet been published. However, the Council of the EU suggests in its press release that financial services companies will be "temporarily excluded from the scope of the directive" and notes that a review clause will be included in the CSDDD requiring re-consideration of this position when the legislation is first reviewed post-implementation.

However, the European Parliament's press release indicates that financial services companies meeting the relevant scoping criteria will however be required to adopt a plan ensuring their business model complies with limiting global warming to 1.5°C. In a press conference delivered by the European Parliament on the same date, it suggests that financial institutions will fall within the scope of the CSDDD with regard to their own operations and "upstream" operations

Further clarity on the precise scope of the CSDDD will emerge once the text of the provisional agreement is made available.

The political agreement reached by the European Parliament and the Council of the EU is now subject to formal approval by the co-legislators. Once formally approved, it will be published in the Official Journal and EU member states will have 2 years to transpose the CSDDD into national law.

A copy of the Council of the EU's press release from 14 December 2023 is available [here](#).

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

The European Parliament's press conference is available for viewing [here](#).

## 7.6 CSRD: First set of ESRS reporting standards are published in the Official Journal

On 22 December 2023, the first set of European Sustainability Reporting Standards (**ESRS**) was published in the Official Journal.

These common reporting standards must be used by all companies which fall within the scope of the Corporate Sustainability Reporting Directive (**CSRD**) and take a "double materiality" perspective by requiring such companies to report on the impact of the relevant company on the environment and society as well as the financial risks and opportunities arising from climate change and other sustainability issues. By requiring the use of common standards in the form of the ESRS, it is intended that all in-scope companies report on sustainability matters in a comparable and reliable manner.

This first set of the ESRS are sector agnostic and must be used by all companies falling within the scope of the CSRD, regardless of the specific sector within which they operate. They comprise of the delegated act itself, Annex 1 which contains 12 sector-agnostic reporting standards and Annex 2 which contains acronyms and a glossary of terms used in the ESRS. The first standard, ESRS 1 sets down general principles to be applied when reporting according to ESRS and does not itself contain specific disclosure requirements. ESRS 2 specifies essential information to be disclosed irrespective of which sustainability matter is being considered and is mandatory for all in-scope companies. All of the remaining standards and the individual disclosure requirements and datapoints within them are subject to a

materiality assessment. This means that each company will report only relevant information and may omit the information in question that is not relevant (or material) for its business model and activity.

The European Commission has proposed postponing the adoption of sector-specific ESRS for two years until June 2026 with the objective of allowing companies to focus on the implementation of the sector-agnostic ESRS.

The CSRD is being rolled out on a staggered basis on the following basis:

- Companies previously subject to the Non-Financial Reporting Directive (which comprise of large listed companies, large banks and large insurance undertakings – all if they have more than 500 employees), as well as large non-EU listed companies with more than 500 employees: for financial years beginning on or after 1 January 2024, with the first sustainability statement being published in 2025.
- Other large companies, including other large non-EU listed companies: for financial years beginning on or after 1 January 2025, with the first sustainability statement being published in 2026.
- Listed SMEs, including non-EU listed SMEs: for financial years beginning on or after 1 January 2026, with the first sustainability statements being published in 2027<sup>3</sup>.

A copy of the first set of the ESRS can be found [here](#).

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

A copy of the Q&A published by the European Commission on the ESRS is available [here](#).

A copy of the European Commission's proposal to delay the adoption of sector-specific ESRS is available [here](#).

## 8. MISCELLANEOUS

### 8.1 European Commission publishes draft delegated acts on critical ICT third-party service providers and oversight fees under DORA

On 16 November 2023, the European Commission published two draft delegated acts (**Delegated Acts**) to be adopted under DORA.

As discussed in our previous Quarterly Legal and Regulatory Update, on 29 September 2023, the ESAs published joint technical advice to the European Commission in respect of the Delegated Acts to be adopted by the European Commission in response to the European Commission's request in December 2022 for the ESAs' input on certain aspects of DORA.

The Delegated Acts relate to:

- (i) the criteria to designate ICT third-party service providers as critical ICT third-party providers (**CTPP**); and
- (ii) the types of expenditure to be covered by oversight fees and the fee calculation.

The European Commission sought feedback on the Delegated Acts and the public consultation on the Delegated Acts ended on 14 December 2023.

The European Commission intends to adopt the Delegated Acts in the second quarter of 2024 and is required to adopt the Delegated Acts by 17 July 2024.

<sup>3</sup> Listed SMEs may decide to opt out of the reporting requirements for a further two years. The last possible date for a listed SME to start reporting is financial year 2028, with first sustainability statement published in 2029.

A copy of the Delegated Acts can be accessed [here](#).

For information on DORA more generally, which will apply from 17 January 2025, you can access the text of DORA [here](#) and our previous briefing on DORA [here](#).

## 8.2 EIOPA Speech on Supervision at EIOPA 2023 Conference

On 21 November 2023, Petra Hielkema, Chairperson of EIOPA, delivered a keynote speech (**Speech**) at the EIOPA 2023 Conference, titled “Hidden risks and new horizons: What’s next for Supervision”.

The text of the Speech can be accessed [here](#).

## 8.3 Adoption of the recast directive on distance marketing of financial services

On 28 November 2023, Directive (EU) 2023/2673 amending Directive 2011/83/EU as regards financial services contracts concluded at a distance and repealing Directive 2002/65/EC (**Recast Directive on Distance Marketing of Financial Services** or **DMFSD**) was published in the OJ.

The DMFSD simplifies existing legislation and increases consumer protection for contracts concluded online, by phone, or by other forms of remote marketing. More specifically, the DMFSD replaces the Distance Marketing of Financial Services Directive (**2002 Directive**) and amends Directive 2011/83/EU (**Consumer Rights Directive** or **CRD**) by adding a new chapter to the CRD which includes consumer protections for financial services contracts concluded at a distance.

The key changes introduced by the DMFSD are as follows:

- Extension of certain CRD rules to financial services distance contracts such as provisions on enforcement, reporting and additional payments;
- Clarification on the scope of application of the DMFSD, including confirmation of the continued application of the “safety-net” feature of the 2002 Directive;
- Improved rules on information disclosure and modernisation of pre-contractual information (**PCI**) obligations (for instance, PCI is to be provided on a durable medium and is to include the environmental or social objectives targeted by the financial service);
- Establishes the right of consumer to request human intervention on sites that display automatic information (**AI**) tools such as chatbots or roboadvice;
- Introduces additional protection for consumers from dark patterns (such as user interfaces designed to nudge users into making unintentional or potentially harmful choices); and
- Introduces the requirement for a prominent and easy-to-find “withdrawal function” in the provider’s interface to facilitate consumers’ right of withdrawal.

The DMFSD entered force on 18 December 2023 and will apply from 19 June 2026, as Member States have 2 years to transpose the DMFSD into national law a further 6 months to apply it from its date of entry into force.

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

## 8.4 ESAs launch consultation on second batch of DORA technical standards

On 8 December 2023, the ESAs published the second batch of DORA consultations, with the first batch of DORA consultations published earlier this year in June 2023.

The second batch of DORA consultations consists of consultation papers on draft regulatory technical standards (**RTS**), implementing technical standards (**ITS**), and guidelines under DORA concerned with the following areas:

- Major ICT-related incident reporting;
- Digital operational resilience testing;
- ICT third-party risk management; and
- Oversight over critical ICT third-party providers.

The second batch of DORA consultations is open for feedback from stakeholders until 4 March 2024.

The second batch of DORA consultations can be accessed [here](#).

For more information on the second batch of DORA consultations please refer to our recent client briefing [here](#).

## 8.5 Publication of Regulation creating a European Single Access Point published in the Official Journal

On 13 December 2023, Regulation (EU) 2023/2859 establishing a European single access point (**ESAP**) providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability (**ESAP Regulation**) was published in the Official Journal.

The ESAP Regulation establishes a framework under which financial and sustainability-related information about EU companies and EU investment products will be made publicly available via a single access point. It does not impose any additional reporting obligations on such entities but instead provides access to information already made public in accordance with existing EU legislation.

On the same date, Directive (EU) 2023/2864 of the European Parliament and of the Council of 13 December 2023 amending certain Directives as regards the establishment and functioning of the European single access point (**ESAP Omnibus Directive**) and Regulation (EU) 2023/2869 of the European Parliament and of the Council of 13 December 2023 amending certain Regulations as regards the establishment and functioning of the European single access point (**ESAP Omnibus Regulation**) were also published in the Official Journal.

Under the ESAP Regulation, the ESAP platform must be available by 10 July 2027. Insurance and reinsurance undertakings will be required to make relevant information available on the ESAP platform in accordance with the specific timeframes detailed in the ESAP Omnibus Directive.

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

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

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

## 8.6 Extension of virtual meetings for Irish companies until 31 December 2024

On 15 December 2023, the Department of Enterprise, Trade and Employment confirmed that the interim period of the Companies (Miscellaneous Provisions) (Covid-19) Act 2020 related to the holding of virtual meetings, including AGMs, by Irish companies has been further extended to 31 December 2024.

A copy of the relevant statutory instrument giving effect to this extension is available [here](#).



## 8.7 Conflict in Ukraine

On 18 December 2023, the Council of the EU announced the introduction of further restrictive measures against Russia under which new sectoral measures and asset freeze provisions were introduced under amendments made to Council Regulation (EU) 833/2014 and Council Regulation 269/2014 respectively.

A full overview of the changes introduced under this twelfth package of measures is available [here](#).

## 8.8 Financial Services and Pensions Ombudsman (Amendment) Bill 2023

On 19 December 2023, the final text of the Financial Services and Pensions Ombudsman (Amendment) Bill 2023 (**Bill**) was published, and the Bill was initiated in the Dáil.

The Bill proposes to clarify that customers of financial service providers who have exited the Irish market will continue to have access to the Financial Services and Pensions Ombudsman (**FSPO**). The Bill also makes further provision for the conduct of investigations by the FSPO, such as conferring a power on the FSPO to summon any person to attend and to give evidence under oath or affirmation.

A copy of the Bill as initiated can be accessed [here](#).

The progress of the Bill can be tracked [here](#).

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

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