



# Investment Firms Quarterly Legal and Regulatory Update

Period covered: 1 April 2023 – 30 June 2023

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## 1. MIFID II

### 1.1 ESMA Guidelines on MiFID II Remuneration Requirements

On 3 April 2023, the European Securities and Markets Association (**ESMA**) published guidelines on certain aspects of the MiFID II remuneration requirements (**Guidelines**). The Guidelines apply in relation to the remuneration requirements as set out in Article 27 and 34 of Commission Delegated Regulation (EU) 2017/565 (**MiFID II Delegated Regulation**) as well as the conflicts of interest requirements set out in Articles 16(3) and 23 of Directive 2014/65/EU (**MiFID II**) and Article 34 of the MiFID II Delegated Regulation in the area of remuneration. The Guidelines also relate to the conduct of business rules set out in Article 24(1) and (10) of MiFID II.

The Guidelines have been issued by ESMA to ensure uniform implementation of these requirements at both a supervisory and firm level.

Guideline 1 deals with the design of remuneration policies and practices. When designing remuneration policies and practices and, especially, where remuneration comprises variable components, firms should define appropriate criteria to align the interests of the relevant persons and of the firms with that of the clients. Firms shall consider qualitative criteria that encourage the relevant persons to act in the best interests of the client. Examples of both good and poor practices are provided within the Guideline.

Guideline 2 relates to the governance in respect of the remuneration practices of the firm such as proper record keeping, the review of the remuneration policy and the involvement of the board of the firm and possibly other control functions of the firm. Firms should ensure that they have appropriate and transparent reporting lines in place across the firm or group to assist in escalating issues involving risks of non-compliance with the MiFID II remuneration, conflicts of interest and conduct of business requirements.

Guideline 3 addresses the need for adequate controls in order to ensure compliance with their remuneration policies and practices and to ensure that these deliver the intended outcomes. Examples of both good and poor practices are provided within the Guideline. The Annex to the Guidelines includes illustrative examples of remuneration policies and practices that would create strong incentives to sell specific products and for which firms would therefore have difficulties demonstrating compliance with the MiFID requirements. The conduct of business and conflict of interest risks related to such examples should be taken into account by firms when designing and implementing their remuneration policies and practices.

The Central Bank of Ireland has indicated on its webpage (see [here](#)) that it intends to comply with these guidelines and incorporates them into its on-going supervisory practices and processes. Firms are expected to comply with these guidelines from 3 October 2023.

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

### 1.2 ESMA Guidelines on certain aspects of the MiFID II Suitability Requirements

On 3 April 2023, ESMA published guidelines on certain aspects of the suitability requirements under MiFID II (**Guidelines**).

The Guidelines aims is to better clarify the application of Article 25(2) of MiFID II and of Articles 54 and 55 of the MiFID II Delegated Regulation regarding the requirement obtain necessary information regarding the client's or potential client's knowledge and experience, risk appetite etc relevant to the specific type of product or service provided. The Guidelines cover key considerations such as:

- Information to clients about the purpose of the suitability assessment and its scope;
- Arrangements necessary to understand clients;
- Proportionality regarding the extent of information to be collected from clients;
- Reliability of client information;
- Updating client information;
- Client information for legal entities or groups;
- Arrangements necessary to understand investment products; and

- Matching clients with suitable products

Firms are expected to comply with these Guidelines from 3 October 2023.

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

### 1.3 Commission Delegated Regulation correcting the RTS as regards certain transparency requirements applicable to transactions in equity instruments

On 16 May 2023, the European Commission published in the Official Journal (**OJ**) a Commission Delegated Regulation amending previous regulatory technical standards (**RTS**) set out in Delegated Regulation (EU) 2017/587 as regards certain transparency requirements applicable to transactions in equity instruments.

The Commission Delegated Regulation will take effect on the 5 June 2023 and can be accessed [here](#).

### 1.4 European Commission publishes Retail Investment Strategy

On 24 May 2023, the European Commission adopted a retail investment package seeking to "empower retail investors to make investment decisions that are aligned with their needs and preferences, ensuring that they are treated fairly and duly protected". The proposal comprises:

- a Directive amending rules set out in MiFID II Insurance Distribution Directive (**IDD**)<sup>1</sup>, Undertakings for Collective Investment in Transferable Securities Directive (**UCITS**)<sup>2</sup>, Alternative Investment Fund Managers Directive (**AIFMD**)<sup>3</sup> and Solvency II<sup>4</sup> (the "**Omnibus Directive Proposal**"); and
- a Regulation amending the Packaged Retail and Insurance-based Investment Products Regulation (**PRIIPs Regulation**)<sup>5</sup>, in particular with regard to rules on the key information document (**KID**).

The European Commission aims to amend organisational and conduct requirements for various types of financial firms and to align regulatory requirements across different distribution channels.

The amendments to MiFID II proposed under the Omnibus Directive include:

- A significant overhaul of the inducements framework which includes a new ban on inducements for execution-only or RTO services to or on behalf of retail clients (save for some limited exceptions for underwriting/placement scenarios). The inducement bans for portfolio management and independent advisors remains. In addition, the proposals include the replacement of the MiFID quality enhancement test with new obligations;
- New requirements for investment firms relating to both *ex-ante* and *ex-post* disclosure of inducements, costs and charges;
- New requirements for marketing communications and information such as risk warnings in respect of particularly risky products, as well as requirements for firms to put in place a policy on marketing communications and preferences. In addition, the introduction of new obligations as regards the division of responsibility of manufacturers and distributors for the content and use of such marketing communications;

<sup>1</sup> Directive 2016/97

<sup>2</sup> Directive 2009/65/EC

<sup>3</sup> Directive 2011/61/EU

<sup>4</sup> Directive 2009/138/EC

<sup>5</sup> Regulation (EU) No 1286/2014

- New requirements for investment advisors, including requirements to undertake at least 15 hours of professional training and development per year and to obtain a certificate to evidence of compliance of such training;
- Amendments to the suitability assessment to be conducted by investment firms to: (i) require that portfolio diversification must be considered as part of the suitability assessment; and (ii) to reduce the extent of the requirements which apply to independent advisors in carrying out such assessments where those advisors are providing independent advice to retail clients where that advice is restricted to well-diversified, non-complex, and cost-efficient financial instruments;
- Amendments to the appropriateness test for retail clients to consider the capacity of the investor to bear full or partial losses and to consider risk tolerance. A new requirement is introduced for the firm to give a specific warning to potential clients if the result of the test is negative. If the firm considers that a transaction is not appropriate for a client, it must not proceed with the transaction, unless the client asks to proceed despite such warning;
- Amendments to allow investment firms to bundle costs for the execution of orders and research where the research is limited to issuers whose capitalisation does not exceed EUR 10 billion;
- Amendments to criteria to be assessed in respect of “elect-up” investors which involve reducing the wealth criterion from EUR 500,000 to EUR 250,000 and introducing a new criterion which relates to the investor’s education or training;
- Amendments to the product governance requirements under MiFID II, including the new requirements for manufacturers to consider the target market’s objectives/ needs and to assess whether the financial instrument is designed appropriately to meet the target market’s objectives and needs. New requirements for distributors to put in place adequate arrangements to obtain this information and to regularly review the products to assess whether the product remains consistent with the objectives and needs of the identified target market and whether the intended distribution strategy remains appropriate;
- New requirements for both manufacturers and distributors to ensure that products offered to clients deliver “value for money” by not deviating from a given benchmark (which ESMA shall be required to develop). PRIIPs manufacturers will need to identify and quantify all costs and charges related to the product assess whether these are justified and proportionate. If justification and proportionality of costs and charges cannot be demonstrated, the manufacturer must not approve the product. Distributors will also be required to quantify the distribution costs and also to perform their own costs and charges assessment against relevant cost and against the benchmarks. Under the proposal, products are only to be offered to clients if they are aligned with the relevant benchmarks.
- New reporting obligations for manufacturers and distributors to NCAs in respect of the distribution costs, costs and charges destined for retail investors;
- New requirements for reporting on cross border activities (dependent on scale) to ESMA and additional measures to strengthen supervisory convergence regarding authorisations of firms and the ongoing compliance;
- New requirements for product manufacturers and distributors to establish an integrated pricing process.

A copy of the Omnibus Directive Proposal can be accessed [here](#).

## 1.5 Amended rules for transparency calculations to start applying on 5 June 2023

On 31 May 2023, ESMA announced that the amended Regulatory Trading Standards 1 and 2 (**RTS 1 and 2**) under Regulation (EU) No 600/2014 (**MiFIR**) will apply from 5 June 2023.

The amendments contained within RTS 1 and 2 include:

- The pre-trade large in scale (LIS) threshold for exchange traded funds (ETFs) will increase €1,000,000 to €3,000,000 and the smallest post-trade LIS thresholds are to increase from €10,000,000 to €15,000,000.
- Under RTS 2, the application date of the quarterly liquidity assessment of bonds should now be the third Monday of the respective publication month of February, May, August and November. This new application date will apply from the publication of the quarterly assessment on 1 August 2023.
- With regards to the annual calculation for non-equity instruments – including LIS and size-specific to the instrument thresholds for bonds, ESMA plans to perform the first annual calculations with those amendments and the new application date under the amended RTS 2 (first Monday of June) by 30 April 2024.
- With regard to the annual calculation for equity and equity-like instruments, ESMA will perform these calculations with the new application date (first Monday of April) under the amended RTS 1 by 1 March 2024.

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

## 1.6 ESMA consults on integration of sustainability preferences in MiFID II suitability assessment and product governance arrangements

On 16 June 2023, ESMA published a call for evidence on the integration of sustainability preferences in the suitability assessment and product governance arrangements under MiFID II.

The aim of this call for evidence is part of the European Commission's initiative on sustainable development. This call for evidence seeks to help ESMA to:

- gain a better understanding of how the MiFID II requirements are being implemented and applied by firms across the EU and the challenges firms are facing in their application;
- gain a better understanding of investor experiences and reactions to the incorporating of sustainability factors within the services of investment advice and portfolio management; and
- collect information, views and data on main trends on aspects related to the provision of sustainable investment products and services to (retail) client.

The call for evidence can be accessed [here](#).

Responses must be submitted before 15 September 2023. A copy of the response paper can be accessed [here](#).

## 1.7 Provisional political agreement reached on proposals to improve MiFID II market data access

On 29 June 2023, the European Council published a press release announcing it has reached provisional political agreement with the Council of the EU on the proposed amendments to MiFIR and the MiFID II Directive which were proposed in December 2022 to improve access to market data and trade transparency.

The provisional agreement includes the following proposals;

- establishment of EU-level consolidated tapes (i.e., centralised data feeds) for different kinds of assets, bringing together market data provided by platforms (such as stock exchanges and investment banks), on which financial instruments are traded in the EU;
- market data from all trading platforms will be included in consolidated tapes, which will aim to publish the information as close as possible to real time. As a result, investors will have access to up-to-date transaction information for the whole of the EU;
- a general ban on 'payment for order flow' (PFOF), a practice through which brokers receive payments for forwarding client orders to certain trading platforms. However, certain countries where PFOF is more common will have until 30 June 2026 to implement the ban.

The next step is for the provisional political agreement to be formally approved by the European Parliament and the European Council.

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

## 2. INVESTMENT FIRMS REGULATION AND INVESTMENT FIRMS DIRECTIVE

### 2.1 Consultation Paper on draft Guidelines on the Benchmarking of Diversity Practices under CRD IV and IFD

On 24 April 2023, the EBA published a consultation paper with draft guidelines on benchmarking of diversity practices including diversity policies and gender pay gap under the Directive 2013/36/EU (**Capital Requirements Directive** or **CRD**) and the IFD (**Guidelines**). The draft Guidelines are addressed to Member State NCAs.

The Guidelines seek to ensure a harmonised benchmarking by NCAs of diversity practices, including the composition of the management body, diversity policies and the gender pay gap at the level of the management body of institutions and investment firms.

Templates for the data collection are included in the guidelines, data will be collected via the EBA's data collection platform [EUCLID] and additional technical information for NCAs regarding the submission of data will be provided separately. NCAs will inform the participants of the data collection accordingly. The EBA will analyse the diversity practices, including diversity policies and the gender pay gap at the level of the management body and publish a benchmarking report at the EU Union level, including a country-by-country analysis every three years.

Responses are due by the 24 July 2023 and can be submitted on the EBA's website [here](#).

The consultation paper including the draft Guidelines can be accessed [here](#)

### 2.2 EBA RTS on the Prudential Consolidation of an Investment Firm Group

On 12 May 2023, EBA published draft RTS on the scope and methods of consolidation of an investment firm group under the IFR.

Under the IFR, investment firm groups must identify a parent undertaking and those of its subsidiaries that are subject to the IFR to carry out the consolidation of the group.

The draft RTS cover four key considerations:

- the scope of consolidation (i.e., types of entities in scope and types of relationships bringing entities in scope);
- the methods of consolidation;

- the methodology for the prudential consolidation of the capital requirements; and
- the rules applicable for minority interest and additional Tier 1 and Tier 2 instruments issued by subsidiaries in the context of prudential consolidation).

The draft RTS can be accessed [here](#).

### 2.3 Draft RTS on specific liquidity measurement under the IFD

On 17 May 2023, the European Commission published draft RTS supplementing Directive (EU) 2019/2034 (**Investment Firms Directive** or **IFD**). Under Article 42(6) of the Directive, the Commission is mandated to adopt delegated acts specifying specific liquidity measurement for investment firms.

The draft RTS come after a mandatory public consultation period in December 2021, after which the European Banking Authority (**EBA**) further consulted ESMA for their feedback.

The draft technical standards set out comprehensive elements that may raise major concerns about investment firms' liquidity risk and that NCAs must consider when assessing the materiality of those risks. NCAs are required to:

- assess all services that an investment firm performs, including ancillary services; and
- consider all specific aspects of the investment firm's funding, external events, operational and reputational events, internal governance, and group structure, when relevant to liquidity risks.

The draft RTS can be accessed [here](#).

### 2.4 Joint EBA and ESMA Guidelines on common procedures and methodologies for SREP translations come into effect

On 19 June 2023, the EBA and ESMA joint final guidelines on common procedures and methodologies for the supervisory review and evaluation process (**SREP**) under IFD (**SREP Guidelines**) came into effect.

The SREP Guidelines were first published on 21 July 2022. They set out common process and criteria for the assessment of the main SREP elements for class 2 and 3 class 3 firms. The EBA also published further final draft Regulatory Technical Standards (**RTS**) on Pillar 2 add-ons for investment firms on that date.

The SREP Guidelines are formed around the following main elements; (i) business model analysis; (ii) assessment of internal governance and investment firm-wide controls; (iii) risks to capital and capital adequacy; and (iv) liquidity risk and liquidity adequacy.

The SREP Guidelines incorporate a common scoring framework which differentiates between specific risks and concerns in order to allow for consistency and comparability.

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

### 2.5 Single Rulebook Q&A - updates

From 1 April – 30 June 2023, the EBA published several updates to their Q&A document on Regulation 2019/2033 (**IFR**). The updates relate to the following areas:



- Article 10 - Qualifying holdings outside the financial sector;
- Article 26 - Nature and treatment of off-balance financial leasing exposures (generated by the lag between the order of the asset and the rental starting date); and
- Article 43 - Inclusion of short-term deposits in third country credit institutions as liquid assets.

The Q&A document can be accessed [here](#).

### 3. EMIR & SFTR

#### 3.1 ECB Opinion on the EMIR 3.0 Proposal

On 7 December 2022, the European Commission published a package of proposals seeking to develop the EU's Capital Markets Union (CMU), including a proposal to amend Regulation (EU) No 648/2012 as amended (EMIR) seeking to make derivatives clearing in the EU more attractive. The proposal to amend EMIR is commonly referred to as "EMIR 3.0".

On 28 April 2023, the European Central Bank published its opinion on the EMIR 3.0 proposal (Opinion). The European Central Bank (ECB) makes a number of specific observations in the Opinion, a number of which are set out below:

- **Enhancing cooperation between authorities.** The ECB supports the proposed strengthening of cooperation among authorities at Union level and the expanded role for the ESMA in fostering supervisory convergence.
- **Updating prudential requirements for CCPs.** The ECB welcomes the proposal amending the admission requirements established by CCPs for clearing members. The ECB also supports the proposed amendments concerning margin requirements as it recognises that passing through intraday margin calls could channel back liquidity to the clearing members. However, the ECB cautions that sometimes this practice may be impractical not only for CCPs but also for clearing members and their clients.
- **Collateral requirements.** The ECB cautions that the acceptance of uncollateralised commercial bank guarantees should remain a temporary regulatory measure applicable only to non-financial counterparties.
- **Reporting obligation.** The ECB strongly supports the proposal to remove the exemption from reporting requirements for intragroup transactions involving a non-financial counterparty.
- **Exemptions of intragroup transactions.** The ECB opposes the removal of equivalence as a pre-condition to availability of the intragroup exemption and its replacement with a third country "blacklist" regime.
- **Removal of supervisory validation of initial margin models.** The ECB objects to the proposal for the requirement for supervisory authorities to formally approve initial margin models. It proposes replacing a formal validation process with a general power of objection by competent authorities.
- **Active account requirement.** One of the most noteworthy elements of the EMIR 3.0 proposal is the requirement for EU market participants to clear a proportion of their transactions in certain derivatives at active accounts at EU CCPs thereby moving a significant proportion of euro derivatives trading to EU CCPs. The ECB proposes that ESMA should consider phase-in periods for the introduction of the active account requirement leaving suitable time for the progressive implementation of this requirement.
- **Reporting of compliance with the active account requirement.** The EMIR3.0 proposal requires counterparties to report annually on their compliance with the active account requirement. The ECB also proposes to increase the frequency of this reporting to a quarterly basis.



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

### 3.2 List of third-country CCPs recognised to offer services and activities in the EEA extended

On 30 April 2023, ESMA updated their list of third-country central counterparties (CCPs) recognised to offer services and activities in the EEA under EMIR. The newly recognised TC-CCPs are:

- Bursa Malaysia Derivatives Clearing Berhad (Malaysia);
- Taiwan Futures Exchange Corporation (Taiwan);
- Cámara de Riesgo Central de Contraparte de Colombia S.A. (Colombia); and
- Tel-Aviv Stock Exchange Clearing House Ltd (Israel).

In addition, the revised list reflects the withdrawal of recognition of six TC-CCPs established in India

The updated list can be accessed [here](#).

### 3.3 Corrigendum to EMIR ITS

On 11 May 2023, the European Commission published a corrigendum to the Commission Regulation (EU) 2022/1860 containing the implementing technical standards (New ITS) setting out the EMIR reporting standards. The corrigendum corrects the ITS by inserting the date of 29 April 2024 as the date on which the ITS takes effect.

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

A consolidated version of the implementing regulation can be accessed [here](#).

### 3.4 ISDA comments on EMIR 3.0 Active Account Proposal

On 17 May 2023, ISDA published its comments on the EMIR 3.0 “active account” proposal.

The “active account proposal” refers to the proposal under EMIR 3.0 to require EU market participants to clear a proportion of their transactions in certain derivatives at active accounts at EU CCPs (Active Account Requirement), thereby moving a significant proportion of euro derivatives trading to EU CCPs.

ISDA pushes back on such proposals countering that the Active Account Requirement will not make the EU derivatives market safer or more attractive. ISDA states that “On the contrary, it will lead to market fragmentation – and fragmentation creates systemic and operational risks. The additional safeguards introduced in EMIR 2.2 in response to Brexit ensure that clearing on UK CCPs is safe and does not raise any financial stability risk.”

ISDA further argues that “Requiring EU market participants to clear a proportion of their business on EU CCPs will introduce additional costs, ultimately hurting European pension savers and investors and the EU economy. It will also make EU clearing members and clients less competitive than third-country firms.”

A copy of the ISDA’s comments can be accessed [here](#).

### 3.5 ESAs publish a letter to EU institutions on the treatment of equity options

On 13 June 2023, the ESAs published a letter to the European Commission on the EMIR bilateral margining framework and equity options.

The ESAs refer to the Commission Delegated Regulation (EU) 2016/2251 setting out the regulatory technical standards (**RTS**) for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, as amended (**Bilateral Margin RTS**).

The Bilateral Margin RTS include a deferred date of application for non-centrally cleared OTC derivatives which are single-stock equity options or index options (equity options). This deferred date of application has been subsequently extended, together with an exemption for intragroup derivative contracts, and is currently set to expire on 4 January 2024.

In the letter the ESAs seek clarity from the European Commission and the co-legislators on what should be the applicable regime for equity options from 4 January 2024 onwards.

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

## 4. CENTRAL BANK OF IRELAND

### 4.1 Updated Central Bank Procedures for Fitness and Probity Investigations, Suspensions and Prohibitions

In April 2023, the Central Bank published updated regulations and guidance for its Fitness and Probity (“**F&P**”) investigations, suspensions and prohibitions procedures, which apply from 20 April 2023, namely the:

- Central Bank Reform Act 2010 (Procedures Governing the Conduct of Investigations) Regulations 2023; and
- Fitness and Probity - Investigations, Suspensions and Prohibitions: Guidance (April 2023)

(together, “**the Updated Regulations and Guidance**”).

For further details on the Updated Regulations and Guidance, please refer to the Dillon Eustace briefing on this topic which can be accessed [here](#).

### 4.2 Central Bank publishes consultation on Guidelines in respect of the Administrative Sanctions Procedure (CP154)

On 22 June 2023, the Central Bank published CP154, which contains draft consolidated guidelines in respect of Central Bank’s Administrative Sanctions Procedure (ASP), for consultation. The enhancements to the ASP are intended to underpin and support the introduction of the Individual Accountability Framework (**IAF**) and to incorporate additional safeguards. The consultation will close on 14 September 2023, following which the Central Bank will review all feedback received.

Interested stakeholders are invited to submit their feedback on CP154 to the Central Bank by the deadline of 14 September 2023 via email to [ASPconsultation2023@centralbank.ie](mailto:ASPconsultation2023@centralbank.ie).

A copy of the Central Bank (Individual Accountability Framework) Act 2023 can be accessed [here](#).

CP154 can be accessed [here](#).

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

### 5.1 European Commission adds Nigeria and South Africa to its list of high-risk countries

Under Article 9 of Directive (EU) 2015/849 (the **Fourth Anti-money Laundering Directive**), the European Commission is mandated to adopt and maintain a list of countries with strategic deficiencies in their anti-money laundering/countering the financing of terrorism regimes.

On 17 May 2023, the European Commission published a draft delegated regulation adding Nigeria and South Africa to its list of high-risk third countries and deleting Cambodia and Morocco from that list.

The delegated regulation will enter into force following its publication in the Official Journal and after the standard two-month scrutiny period by the European Parliament and the Council of Europe. A copy of the delegated regulation can be accessed [here](#).

## 5.2 Changes to the right of access to the Central Register of Beneficial Ownership of Companies

On 13 June 2023, the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) (Amendment) Regulations 2023 (**Amending Regulation**) became law in Ireland, restricting the access to the Central Register of Beneficial Ownership of Companies to those persons who have a “legitimate interest” in anti-money laundering and the countering of terrorism financing (**AML**).

The amending regulations are required on foot of the European Court’s decision in *Sovim*<sup>6</sup> in November 2022. The Court found that a regime of general public access to companies’ beneficial ownership information constituted a “a serious interference with the fundamental rights to respect for private life and to the protection of personal data”.

Under the “legitimate interest requirement” the interested party must demonstrate to the Registrar of Beneficial Ownership of Companies and Industrial and Provident Societies that

- that the person is engaged in the prevention, detection or investigation of money laundering or terrorist financing offences,
- they are seeking to inspect the information for those purposes; and
- that the relevant entity concerned is connected with persons convicted of an AML/CTF offence holds assets in a high-risk third country.

The Amending Regulations amend the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 (**Principal Regulation**).

The Principal Regulation can be accessed [here](#).

The Amending Regulation can be accessed [here](#).

## 6. DATA PROTECTION

### 6.1 EDPB Guidelines on Data Subject Right of Access

On 17 April 2023, the EDPB published a final version of the Guidelines 01/2022 on data subject rights - Right of access (the “**Guidelines**”). The updated version follows a public consultation on their draft guidelines published on 18 January 2022.

The Guidelines include consideration of:

- The aim of the right of access, the structure of Article 15 of GDPR and general principles;
- General considerations regarding the assessment of access requests;
- Scope of the right of access and the personal data and information to which it refers;
- Guidelines on how controllers can provide access;
- Limits and restrictions of the right of access; and
- A flowchart illustrating the process relevant firms should take in interpreting, assessing and processing a request.

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

<sup>6</sup> The *Sovim* decision (C-37/20 and C-601/20)

## 6.2 EDPB promotes consistent approach for 101 NOYB data transfers complaints

On 19 April 2023, the European Data Protection Board (**EDPB**) published a report of the work undertaken by supervisory authorities within the “101 Task Force”. This task force (**TF**) was initiated at a plenary meeting on 2 September 2020 to ensure a common supervisory approach to the 101 complaints made by non-profit organisation NOYB regarding transfers of personal data to the USA earlier in that year.

The complaints revolve around the implementation of the tools “Google Analytics” and “Facebook Business Tools” (**Tools**) on a website and the subsequent processing of personal data that may follow because of such implementation.

The report details three main topics:

1. **Transfers of Personal Data:** Even if appropriate standard contractual clauses are used, additional measures must still be in place to address deficiencies identified in the Schrems II judgement. In this context, the TF members agreed that encryption by the data importer was not a suitable measure if the data importer, as provider of the tool, has legal obligations to provide the cryptographic keys. In addition, there was an agreement that anonymization functions, such as the anonymization of the IP address, are not a suitable measure where the anonymization takes place only after all the data has been transferred to the third country to the importer.
2. **Principle of Accountability:** The onus of compliance is not solely upon the website operators (as data controllers), but in certain instances also on respective “providers of tools” which enable the processing of data to a sufficient degree whereby they can be considered a controller, or a processor for the purposes of the assistance obligations under Article 28 GDPR
3. **Allocation of data protection roles:** The TF members agreed that the decision of a website operator to use a specific tool for specific purposes is regarded as determining the “purposes and means” pursuant to Article 4(7) GDPR (as relevant for identifying the data controller(s)).

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

## 6.3 European Parliament issues an Opinion rejecting the proposed EU-US Data Privacy Framework

On 11 May 2023, the European Parliament adopted a non-binding opinion concluding that the EU-U.S. data privacy framework proposed by the European Commission on 13 December 2022 (**EU-U.S. Data Privacy Framework**) fails to ensure an adequate level of protection for personal data transferred from the EU to US companies (**Opinion**).

The European Commission had previously proposed on 13 December 2022 that the EU-U.S. Data Privacy Framework, which was intended to replace the previous US Privacy Shield previously invalidated by the CJEU in the Schrems II case, would ensure equivalence in the level of protection between U.S. and EU Law.

In the Opinion, the European Parliament indicates that;

- It has taken note of the efforts made in the President of the United States’ Executive Order 14086 of 7 October 2022 on Enhancing Safeguards for United States Signals Intelligence Activities (**EO 14086**) to lay down limits on US signals intelligence activities. However, the European Parliament voices its concerns in respect EO 1408, such as the failure to provide sufficient safeguards in the case of bulk data collection and the failure to provide clear rules on data retention.
- In respect of the principles of proportionality and necessity introduced by EO 14086, the substantive definitions in EO 14086 are not in line with their definition under EU law and their interpretation by the CJEU. The European Parliament also points out

that for the purposes of the EU-US Data Privacy Framework, these principles would be interpreted solely in the light of US law and legal traditions and not those of the EU.

- In relation to the new Data Protection Court, the European Parliament calls out the inability of European citizens to seek effective judicial redress in the U.S. courts to the same extent as US citizens, the failure of the proposed redress process to provide for an avenue for appeal in a federal court and the failure to provide any possibility for of European citizens to claim damages and the lack of independence of the Date Protection Review Court.

The Opinion notes that the European Parliament believes that the EU-US Data Privacy Framework fails to create essential equivalence in the level of protection in the U.S, and it therefore calls on the European Commission to continue negotiations with its U.S. counterparts with the aim of creating a mechanism that would ensure such equivalence and which would provide the adequate level of protection required by Union data protection law. It has called on the European Commission not to adopt the adequacy finding until all the recommendations made in the Opinion and the EDPB opinion of 28 February 2023 are fully implemented.

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

#### 6.4 EDPB adopts the final version of the Recommendations 1/2022 on Controller Binding Corporate Rules

On 20 June 2023, the EDPB adopted its final version (version 2.0) of its Recommendations 1/2022 on the application for approval and on the elements and principles to be found in Controller Binding Corporate Rules (**Recommendations**).

The Recommendations build upon the agreements reached by data protection authorities in the course of approval procedures on concrete BCR applications since the entering into application of the GDPR. The recommendations provide additional guidance and aim to ensure a level playing field for all BCR applicants. The recommendations also bring the existing guidance in line with the requirements in the CJEU's Schrems II ruling.

The Recommendations indicate that the EDPB expects all new and ongoing BCR-C applicants to bring their BCR-C in line with the requirements set out below either during the application process or as part of their 2024 update.

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

In addition, on 20 June 2023, the EDPB adopted a template complaint form to facilitate the submission of complaints by individuals and the subsequent handling of complaints by Data Protection Authorities (**DPAs**) in cross-border cases. A copy of the template complaint form and the template acknowledgement of receipt can be accessed [here](#).

## 7. PRIIPs

### 7.1 Publication of Consolidated FAQ on PRIIPs Regulation

On 17 May 2023, the ESAs published a consolidated Q&A containing all responses given by the European Commission on the PRIIPs Regulation (coded in blue) as well as all responses provided by the ESAs relating to the practical application or implication of the PRIIPs Regulation and its delegated acts to date (not colour coded).

A copy of the Consolidated Q&A can be accessed [here](#).

### 7.2 European Commission proposes amendments to the PRIIPs Regulation

On 24 May 2023 the European Commission published its Retail Investment Strategy which proposes targeted changes to the PRIIPS Regulation which are intended to improve information for investors and their ability to take well-informed decisions as well as adapting disclosures to the digital environment.

The proposed changes to the PRIIPS Regulation and related implementing measures include (but are not limited to) the following:

- The inclusion of a new section in the PRIIPS KID entitled “How environmentally sustainable is this product” which is intended to complement the existing EU sustainable finance disclosure framework;
- The inclusion of a new “dashboard” of key information on the first page of the PRIIPS KID which will provide information on the summary risk indicator, “total costs” figure and recommended holding period;
- clarifying that certain types of corporate bonds with make-whole causes are out of the scope of the PRIIPs Regulation provided that they are redeemed at a fair; and amending the rules for presenting costs of multi-option products (**MOPs**); and
- Introduction of other changes to adapt the PRIIPS KID to a digital environment.

The legislative proposals put forward by the European Commission must now be considered by the European Parliament and the Council of Europe.

The proposed amendments to the PRIIPS Regulation can be accessed [here](#).

A Dillon Eustace briefing on this topic can be accessed [here](#).

## 8. SUSTAINABILITY

### 8.1 ESAs launch consultation on proposed amendments to SFDR Delegated Regulation

On 12 April 2023, the ESAs published a consultation paper on proposed amendments to the SFDR Delegated Regulation<sup>7</sup>.

The proposals put forward by the ESAs include, but are not limited to:

- Extension of the mandatory principal adverse impact (PAI) indicators to incorporate additional social indicators and targeted changes to some of the existing PAI indicators contained in the SFDR Delegated Regulation
- Additional pre-contractual, periodic report and website disclosure obligations on any financial product which sets a greenhouse gas emissions reduction (or “decarbonisation”) target;
- An obligation for any fund management company which invests in “sustainable investments” within the meaning of the SFDR to disclose the quantitative thresholds used to determine that such investments do not significantly harm any environmental or social objectives;
- Simplification of the existing pre-contractual and periodic report annexes and the inclusion of a dedicated dashboard of key information.

The consultation closes on 4 July 2023. The ESAs are expected to issue their final advices containing revisions to the SFDR Delegated Regulation to the European Commission for its consideration by the end of October 2023.

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

### 8.2 European Commission provides key clarifications on the SFDR framework

On 14 April 2023, the European Commission published its responses to questions posed by the ESAs on key aspects of the SFDR framework in September 2022.

<sup>7</sup> Commission Delegated Regulation (EU) 2022/1288 as amended by Commission Delegated Regulation (EU) 2023/363

Its responses provide guidance on a number of key concepts under the SFDR, including the following:

- The definition of “sustainable investment” under the SFDR and in particular how the “contribution” limb of the “sustainable investment” test can be satisfied;
- The scope of Article 9(3) of the SFDR, confirming that funds which passively track a Paris-Aligned benchmark or a Climate Transition benchmark can be classified as an Article 9(3) fund without being required to assess whether constituents of the benchmark satisfy the “sustainable investment” test under the SFDR;
- Confirmation that it is possible for an actively managed fund to fall within the scope of Article 9(3) of the SFDR provided that related disclosure obligations have been satisfied; and
- Confirmation that in order for a fund to consider principal adverse impacts of investment decisions on sustainability factors, procedures must be implemented to mitigate those impacts.

The European Commission guidance can be accessed [here](#).

A copy of the questions posed by the ESAs on the SFDR framework in September 2022 can be accessed [here](#).

### 8.3 Publication of Consolidated Q&A on the SFDR and the SFDR Delegated Regulation

On 17 May 2023, the ESAs published a consolidated Q&A containing all responses given by the European Commission on the SFDR and the SFDR Delegated Regulation (coded in blue) as well as all responses provided by the ESAs relating to the practical application or implication of SFDR (not colour coded) to date.

A copy of the Consolidated Q&A can be accessed [here](#).

### 8.4 Provisional Agreement reached on European Single Access Point

On 23 May 2023 the Council of the European Union announced that agreement has been reached between it and the European Parliament on the creation of a European Single Access Point (ESAP) under which financial and sustainability-related information published by European companies, including small companies, will be made available to investors free of charge via a digital platform.

ESAP will provide access to information already made public by in-scope companies under relevant European directives and regulations. Amongst other objectives, this is intended to facilitate ease of access for fund management companies and other financial market participants to sustainability-related information reported by in-scope European companies.

Under the provisional agreement, the ESAP platform is expected to be available from summer 2027 and gradually phased in to allow for a robust implementation.

The provisional agreement must be formally confirmed by the Council of Europe and the European Parliament before it can be formally adopted.

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

### 8.5 European Commission publishes draft delegated acts under the CSRD for consultation

On 12 June 2023, the European Commission launched a consultation on draft delegated acts containing the first set of sustainability reporting standards for large European companies and listed European companies under the Corporate Sustainability Reporting Directive (CSRD) under which in-scope European companies will be required to report on their environmental and societal impact as well as about risks faced from climate change and other issues.



The first delegated act, which takes into account technical advice from EFRAG, sets out cross-cutting standards and standards for the disclosure of environmental, social and governance information.

The consultation closes on 7 July 2023 after which the European Commission will consider feedback received and then submit finalised delegated acts to the European Parliament and Council for scrutiny.

The CSRD will be effective for financial years starting on or after 1 January 2024 for those entities already subject to the Non-Financial Reporting Directive (reporting in 2025) and for financial years starting on or after 1 January 2025 for all other large companies (reporting in 2026).

A copy of the draft delegated acts being consulted on can be accessed [here](#).

## 8.6 European Commission publishes Sustainable Finance Package

On 13 June 2023, the European Commission published a range of measures which are intended to “build on and strengthen the foundations of the EU sustainable finance framework”.

The measures announced by the European Commission include the following:

### Adoption of new EU Taxonomy Delegated Acts by the European Commission

Following a consultation on draft delegated acts under the Taxonomy Regulation earlier this year, the European Commission announced the following:

- Adoption of delegated acts setting down the technical screening criteria which must be satisfied in order for an economic activity to be considered to make a substantial contribution to (i) sustainable use and protection of water and marine resources, (ii) transition to a circular economy, (iii) pollution prevention and control and (iv) protection and restoration of biodiversity and ecosystems, thus allowing new sectors and operators to show their Taxonomy alignment. A copy of the draft delegated acts and annexes thereto can be accessed [here](#);
- Adoption of targeted amendments to the existing EU Taxonomy Climate Delegated Acts which 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 which can be accessed [here](#); and
- Adoption of amendments to the existing EU Taxonomy Disclosures Delegated Acts which apply to entities falling within the scope of Article 8 of the Taxonomy Regulation to clarify the disclosure obligations for the additional activities.

Assuming that neither of the European Parliament or the Council of Europe object to the draft delegated acts adopted by the European Commission, they will enter into force and apply from January 2024.

### Proposal for a Regulation on ESG Rating Providers

The European Commission also launched a consultation on a proposed regulation on the transparency and operations of ESG rating providers (**ESG Rating Providers Proposal**) which is intended to improve the quality of ESG ratings by; (i) improving transparency of ESG ratings characteristics and methodologies; 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 offering services to investors and companies in the EU should be authorised and supervised by ESMA.

The consultation process closes on 22 August 2023.

The draft ESG Rating Providers Proposal can be accessed [here](#) with the related annexes thereto accessible from [here](#).

## Recommendation on Transition Finance

The European Commission also published a recommendation on facilitating finance for the transition to a sustainable economy (**Recommendation**).

The Recommendation is intended to provide guidance as well as practice examples to companies and the financial sector on how they can use the various tools of the EU sustainable finance framework voluntarily to channel the urgently needed investments into transition and manage their risks stemming from climate change and environmental degradation.

A copy of the Recommendation can be accessed [here](#). The annex to the Recommendation can be accessed [here](#).

## Commission Notice on Interpretation and Implementation of certain legal provisions of the Taxonomy Regulation and links to the SFDR

As part of this package, the European Commission published a new FAQ document on the interactions between the concepts of 'taxonomy-aligned investment' and 'sustainable investment' under the SFDR.

In this document, the European Commission clarified that investments in 'environmentally sustainable economic activities' within the meaning of the EU Taxonomy can be qualified as a 'sustainable investment' within the meaning of the SFDR. This clarification intends to simplify and encourage the use of the taxonomy framework as a base for a common understanding of what environmental sustainability means in EU financial products and use of proceeds instruments.

A copy of the FAQ document can be accessed [here](#)

## Enhancement of the usability of the EU Taxonomy and the overall EU sustainable finance package

The European Commission also published a staff working document on the usability of the EU Taxonomy and the wider EU sustainable finance framework which it summarises the most recent measures and initiatives adopted by it to support stakeholders in their implementation efforts.

The European Commission has also launched a series of online tools and guides which are intended to help stakeholders when assessing and reporting their taxonomy alignment.

These documents and tools are now gathered on the new EU Taxonomy Navigator website which provides access to the following:

- EU Taxonomy Compass;
- EU Taxonomy Calculator;
- FAQs repository providing an overview of questions and answers on the EU Taxonomy and its delegated acts; and
- EU Taxonomy User Guide-a simple guide on the Taxonomy for non-experts.

The EU Taxonomy Navigator website can be accessed [here](#).

A copy of the European Commission's staff working document can be accessed [here](#).

Details of the full package of measures announced by the European Commission can be accessed [here](#).

## 9. FINANCIAL SANCTIONS

### 9.1 Adoption of eleventh package of sanctions against Russia by the European Union on 23 June 2023

In reaction to Russia's continued military aggression against Ukraine, the European Union adopted additional economic sanctions against Russia which have been introduced through a suite of additional packages adopted by the Council of the European Union announced on 23 June 2023. This package included, amongst others, the following measures:

- (i) an extension to the existing prohibition on the sale of investment funds which provide exposure to transferable securities denominated in any EU official currency to Russian investors<sup>8</sup> to prohibit the sale of investment funds which provide exposure to transferable securities denominated in any other currency issued after 6 August 2023 to any such Russian investors<sup>9</sup>;
- (ii) an extension to the list of those individuals and entities subject to restrictive measures;
- (iii) introduction of a further criterion for the listing of natural or legal persons, entities or bodies subject to the asset freeze and the prohibition on making funds and economic resources available to designated persons and entities and amendment of an existing listing criteria;
- (iv) introduction of further derogations from the asset freeze and the prohibition on making funds and economic resources available to certain listed entities to allow for divestment from Russian companies and the disposal of certain types of securities held with specified listed entities; and
- (v) additional provisions on information exchange and reporting.

For a complete overview of the additional measures introduced on 23 June 2023, please see the related press release which can be accessed [here](#). The Central Bank's webpage on sanctions reporting can be accessed [here](#).

A consolidated version of the European Commission's frequently asked questions on the range of measures introduced in response to Russia's continued military aggression against Ukraine can be accessed [here](#).

## 10. MISCELLANEOUS

### 10.1 European Commission adopts draft Memorandum of Understanding with the United Kingdom

On 17 May 2023, the European Commission announced that it has adopted a draft Memorandum of Understanding (MoU) establishing a framework for structured regulatory cooperation in the area of financial services with the UK.

The MoU, once signed by both Parties, will create the administrative framework for voluntary regulatory cooperation in the area of financial services between the EU and the UK. The MoU does not deal with the access of UK-based firms to the Single Market – or EU firms' access to the UK market - nor does it prejudice the adoption of equivalence decisions.

The draft MOU is subject to final political endorsement by the European Council before it can be signed by the Commission on behalf of the EU.

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

### 10.2 Publication of MiCA and the recast Transfer of Funds Regulation

<sup>8</sup> Russian investors for this purpose includes any Russian national, any natural person residing in Russia, or any legal person, entity or body established in Russia. This prohibition is disapplied where the investor in question is an EEA national or a Swiss national or has a temporary or permanent residence permit in an EEA Member State or Switzerland

<sup>9</sup> Russian investors for this purpose includes any Russian national, any natural person residing in Russia, or any legal person, entity or body established in Russia. This prohibition is disapplied where the investor in question is an EEA national or a Swiss national or has a temporary or permanent residence permit in an EEA Member State or Switzerland.

On 9 June 2023, Regulation (EU) 2023/1114 on markets in crypto assets (**MiCA**) and Regulation (EU) 2023/1113 on information accompanying transfers of funds and certain crypto-assets (the **Recast Funds Transfer Regulation**) were published in the Official Journal of the European Union.

The regulations will enter into force on 29 June 2023 giving effect to a new regulatory regime for crypto-assets across the European Union.

The Dillon Eustace briefing paper entitled “Regulation of crypto-assets becomes law provides further details and can be accessed [here](#).”

### 10.3 Thematic Assessment on Embedding an effective Conduct-Focused Culture in Wholesale Market

On 15 June 2023, the Central Bank published a report on a thematic assessment conducted regarding the approach taken by boards/senior management of wholesale market firms to foster and embed an effective conduct-focused culture. The firms within scope of the assessment carried out by the Central Bank included a range of investment firms, broker-dealers and fund service providers which engage in MiFID activities. The findings of the Central Bank will therefore be of direct relevance to Irish fund management companies with extended MiFID ‘top-up’ permissions.

The key findings of the report can be summarised as follows:

- **Conduct-focused culture.** Firms are required to embed an effective conduct-focused culture that is underpinned by an effective conduct risk management framework which seeks to mitigate the market conduct risks to which a firm is exposed.
- **Role of Board and senior management.** The Central Bank suggests that Boards and senior management should “set the tone from the top”. This involves making positive efforts to communicate the desired culture to the rest of the organisation.
- **Management Information.** The Central Bank suggests that Boards and senior management should be more proactive in ensuring timely and appropriate management (**MI**) information to ensure sufficient oversight of market conduct risk, noting that it found that MI information provided to the Board and senior management is “often deficient”.
- **Responsibilities for managing and mitigating market conduct risk.** The Central Bank expects firms to ensure the responsibilities of senior management to manage and mitigate market conduct risk are regularly communicated in the role profiles and objectives of senior management.
- **Hybrid-work.** With regard to hybrid-work, firms should proactively consider any mitigation measures or steps to take to ensure defined values and expected behaviours are being adhered to in a hybrid-working environment.
- **Speak-up culture.** The Central Bank expects senior management of firms to assess how they can encourage an inclusive “speak up culture”, making staff comfortable when raising concerns.

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

### 10.4 Provisional Agreement reached on Financial Services Contracts Concluded at a Distance

On 6 June 2023, the Council of the EU and the European Parliament reached a provisional political agreement on the directive concerning financial services contracts concluded at a distance, repealing the existing Distance Marketing Directive and inserting its provisions into the Consumer Rights Directive once finalised.

The agreed text simplifies existing legislation, increases consumer protection and is intended to reduce unnecessary burden and create a level playing field for financial services concluded at a distance in order to encourage the cross-border provision of such services. It is also intended to improve the rules around information disclosure and aims to provide better protection for consumers in the digital

environment. Under the agreed text, where the consumer concludes a contract using online tools (such as robo-advice or chatbots), the consumer will have the right to request human intervention in order to fully understand the effects of the contract on their financial situation.

The agreed text also provides for a 'withdrawal function', which aims to ensure that to withdraw from a contract is not more burdensome than to enter it.

The provisional agreement must now be formally adopted by both the European Parliament and the Council of Europe before being published in the Official Journal of the EU.

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

### 10.5 ESAs launch Consultation on first batch of DORA RTS

On 19 June 2023, the ESAs published the first batch of policy mandates in respect of Articles 15, 16(3), 18(3), 28(9) and 28(10) of the [Digital Operational Resilience Act \(DORA\)](#).

Please refer to our Dillon Eustace briefing paper entitled "First Public Consultation on DORA standards launched" for further information which can be accessed [here](#).

### 10.6 Department of Finance Publishes Public Consultation on the Irish Funds Sector

On 21 June 2023, the Irish Department of Finance launched a public consultation on the Irish funds sector in which it seeks feedback from relevant stakeholders on a range of matters including the regulatory and supervisory framework, the impact of the funds sector and the taxation of investment products amongst others.

This follows the publication of the "Terms of Reference of the Funds Sector 2030 Review" in April 2023 which mandates the Irish Department of Finance to conduct a review of Ireland's funds sector.

The consultation closes on 15 September 2023 and will be followed by targeted stakeholder engagement in late 2023 and 2024. The Department of Finance is due to report to the Minister for Finance in summer 2024.

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

The full Terms of Reference can be accessed [here](#).

### 10.7 New Client Asset Requirements enter into force

On 1 July 2023, the new Central Bank Client Asset Requirements, set out in the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2023 entered into force.

For further information, please refer to our [recent briefing](#) on the topic.

### 10.8 ESMA highlights the Risks arising from the Provision of Unregulated Products and/or Services

On 25 May 2023, ESMA published a statement highlighting arising from the provision of unregulated products and/or services by investment firms to investors.

From a consumer protection perspective ESMA is concerned that:

- There is a potential for investors to be misled as to the level of protection they receive especially if the unregulated product or service are marketed on the same webpage as regulated ones or if there is a lack of clarity on webpages as to the regulatory status of the products/services being offered;
- There is a potential for investors to be confused or mis-sold unregulated products (e.g. due to a reliance upon a recommendation from an investment firm (in such instances the suitability and appropriateness assessment do not apply)); and
- Some firms may actively encourage this confusion between regulated and unregulated services.

ESMA expects that investment firms exhibit the following behaviours when providing, together with investment services, unregulated products/and or services to investors:

- The regulatory status of the product and/or service is clearly and effectively communicated in all dealings with clients, and at every stage of the sales process. For example, all marketing communications should indicate clearly if a product and/or service offered by an investment firm is regulated or not.
- The information about the regulatory status of the product and/or service is fair, clear and not misleading.
- The terminology used does not imply that the product and/or service is regulated or protected in any way where this is not the case.
- The information provided explicitly states what investor protections are lost/not applicable when investing in a product and/or service deemed to be out of scope of financial regulation, including: compensation schemes, client assets protections; supervision by the NCA and recourse to any national regulatory authorities.
- When engaging in unregulated activities, information provided to the client or potential client, including marketing materials and other documentation, does not include a reference to the investment firm being authorised/regulated by an NCA.
- Any information on an investment firm's website related to unregulated activities is clearly distinguished from regulated activities. Investment firms have separate sections on any website they operate for regulated activities and any other activities which they carry out. Client documentation is distinguished accordingly in order to ensure that clients are sufficiently aware of the differences in protection.

ESMA recommends investment firms take into consideration the impact that their unregulated activities may have on their business activity as a whole as part of their risk management systems and policies. It also reminds investment firms that they should have a full understanding and comprehensive view of the risks connected with both their regulated and unregulated activities, including the risks to clients, to markets and the risk to the investment firm itself. Investment firms should consider their ability to comply with their regulatory obligations and should identify and manage any potential conflict of interest arising from the provision of both regulated and unregulated activities.

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

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

**Keith Waine**

E-mail: [keith.waine@dilloneustace.ie](mailto:keith.waine@dilloneustace.ie)

Tel : + 353 1 673 1822

**Karen Jennings**

E-mail: [karen.jennings@dilloneustace.ie](mailto:karen.jennings@dilloneustace.ie)

Tel : + 353 1 673 1810

**Laura Twomey**

E-mail: [laura.twomey@dilloneustace.ie](mailto:laura.twomey@dilloneustace.ie)

Tel : + 353 1 673 1848

**Caoimhe Costello**

E-mail: [Caoimhe.Costello@dilloneustace.ie](mailto:Caoimhe.Costello@dilloneustace.ie)

Tel : + 353 1 673 1856

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