



Payments, E-Money and Crypto-Assets Quarterly Legal and Regulatory Update

Period covered: 1 October 2022 – 31 December 2022

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1. PAYMENTS

1.1 EBA updates Single Rulebook Q&A on PSD2

During the period 1 October 2022 to 31 December 2022, the European Banking Authority (**EBA**) updated its Single Rulebook Questions and Answers (**Q&As**) publication on Directive (EU) 2015/2366 (the **Revised Payment Services Directive** or **PSD2**) (the **Single Rulebook Q&A**). The Q&As in respect of the following articles have been updated:

- Article 6 - Control of the shareholding

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

1.2 Proposal to amend regulations regarding instant credit transfers in euro

On 26 October 2022, the European Commission adopted a legislative proposal for a regulation on instant payments in euro across the EU (**Proposal**) amending Regulation (EU) No 260/2012 (the **SEPA Regulation**) and Regulation (EU) 2021/1230 (the **Cross-Border Payment Regulation**). Instant payments allow for a credit transfer in a matter of seconds at any time and differ from other credit transfers which are processed by payment service providers (**PSPs**) only during business hours, with the funds credited to the payee only by the end of the following business day. The EU are also considering if the requirements under PSD2 require amending to fully integrate the proposed regulation.

While the infrastructure for instant payments has existed since the implementation of the Single Euro Payments Area (**SEPA**) instant credit transfer scheme (**SCT Scheme**), uptake has been slow with instant payments accounting for only 11% of the euro credit transfers in the EU at the end of 2021.

The Commission's draft regulation consists of four central measures, designed to fuel supply and demand for instant payments in euro:

- Obligation on PSPs to provide instant payments in euro** –EU PSPs will be obligated to provide instant payments in euro, applicable to PSPs that operate both inside and outside the euro area, on the basis that they already offer credit transfers in euro.
- Making euro instant payments affordable** – The draft regulation will ensure that charges for instant payments will have to be equal or lower than the charges for traditional, non-instant credit transfers, thus incentivising the affordable instant euro payment.
- Verification of payee details** - All PSPs will be required to offer a service verifying that the payee's IBAN matches the name of the payee prior to payment being made and notifying the payer of any detected discrepancy suggesting fraud or error.
- Harmonised EU sanctions screening**– All PSPs will be required to follow a harmonised procedure for sanctions screening, based on daily checks of their own clients against the regularly updated EU sanctions list.

The European Council and Parliament are now considering the European Commission's Proposal, with the requirements expected to come into force from the end of 2024.

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

1.3 Amendment of regulatory technical standards in relation to the 90-day exemption for account access

On 5 December 2022, the Commission Delegated Regulation (EU) 2022/2360 of 3 August 2022 amending the regulatory technical standards laid down in Delegated Regulation (EU) 2018/389 as regards the 90-day exemption for account access was published in the Official Journal of the EU (**OJ**).

The amendments include:

- A new mandatory exemption from the strong customer authentication (**SCA**) requirement mandating that SCA will not be applied when customers use an account information service provider (**AISP**) to access their payment account information (subject to certain conditions being met);
- The voluntary exemption in Article 10 of the RTS will be limited to instances where the customer accesses the account information directly; and
- Where the above exemptions apply, the renewal date of the SCA will be extended from 90 days to 180 days.

The Delegated Regulation entered into force on the 25 December 2022 and will apply from 25 July 2023.

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

1.4 EBA Single Rulebook Q&A on PAD

On 22 December 2022, the EBA published a new Single Rulebook Questions and Answers (**Q&As**) publication on Directive 2014/92/EU (**Payment Accounts Directive** or **PAD**) addressing a Q&A under Article 5 – Statement of Fees.

A copy of the Single Rulebook Q&A is available [here](#).

2. DIGITAL FINANCE & CRYPTO-ASSETS

2.1 Update on the recast Funds Transfers Regulation and EBA call for interest

Following the provisional agreement reached on the proposal for a Regulation on information accompanying transfers of funds and certain crypto-assets (recast) (**Recast Regulation**) in June 2022, the text of the Recast Regulation looks close to being finalised by the European Parliament and the Council of the EU (the **Council**). The Recast Regulation sets out new obligations on crypto-asset service providers (**CASPs**) regarding the collection and provision of information about the originator and the beneficiary of the transfer of crypto-assets they operate.

On 21 October 2022, the EBA launched a call for interest to join two technical expert groups and a call for input on the Joint Guidelines to prevent the abuse of fund transfers for money laundering and terrorist financing (**ML/TF**) purposes issued in 2017. The deadline to submit interest to join the technical expert groups expired on 4 November 2022 and the deadline for submissions with input on the Joint Guidelines was 15 November 2022.

The proposal of the Recast Regulation can be accessed [here](#).

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

2.2 Taxation: New transparency rules require service providers to report crypto-asset transactions

On 8 December 2022, the European Commission published a statement, outlining proposed new tax transparency rules for all service providers facilitating transactions in crypto-assets for customers in the European Union (**Statement**). These new transparency rules are set down in a proposal for a Directive amending Directive 2011/16/EU on administrative cooperation (**DAC1**) in the field of taxation (**Proposal**). These new rules compliment the Markets in Crypto-assets Regulation (**MiCA**) and existing anti-money laundering rules.

The European Commission, in its statement, underscores the importance of fair and effective taxation for securing public investment and facilitating an innovative business environment, yet highlights the current limitations tax authorities face whilst monitoring proceeds

obtained by crypto-assets. The Proposal aims to remedy this by requiring all CASPs to report transactions of clients residing in the EU. The Proposal also aims to establish minimum level of penalties for serious non-compliance.

The Proposal amending the DAC1, is consistent with the OECD initiative on the Crypto-Asset Reporting Framework (**CARF**) and the amendments to the OECD Common Reporting Standard (**CRS**) (the OECD publication is available [here](#)).

The draft text will be submitted to the European Parliament for consultation and to the Council for adoption. It is foreseen that the new reporting requirements would take effect on 1 January 2026.

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

A copy of the European Commission press release is available [here](#).

2.3 DLT Pilot Regime Regulation Update

On 27 September 2022, ESMA published a report (**Report**) on Regulation (EU) 2022/858 on a pilot regime for market infrastructures based on DLT (**DLT Pilot Regime Regulation**). The DLT Pilot Regime Regulation will apply from 23 March 2023 and allow for certain DLT market infrastructures to be temporarily exempted from specific requirements of Union financial services legislation.

The DLT Pilot Regime Regulation required ESMA to assess whether the regulatory technical standards (RTS) developed under Regulation (EU) No 600/2014 (**Markets in Financial Instruments Regulation** or **MiFIR**) relative to certain pre-and post-trade transparency and data reporting requirements require amendment. On 4 January 2022, ESMA published a call for evidence on distributed ledger technology (DLT). Based on the feedback received, ESMA indicates in the Report it is not necessary to amend the pre-and post-trade transparency and data reporting requirements in the RTS to allow for use on tokenised securities. However, ESMA recognised that supervisory guidance on certain technical elements would contribute to a consistent application of the DLT Pilot Regime.

On 15 December 2022, ESMA published a final report (**Final Report**) containing its draft guidelines on the DLT Pilot Regime Regulation following a public consultation in Q3 2022. The guidelines (**Guidelines**) set out standard forms, formats and templates to apply for permission to operate a DLT market infrastructure. The Guidelines will also apply from 23 March 2023.

On 16 December 2022, ESMA published a new Q&A document on the implementation of the DLT Pilot Regime Regulation and its interaction with other EU financial services legislation. The Q&As relate to the topics of transaction reporting, financial instruments reference data, and order record keeping.

The DLT Pilot Regime Regulation can be accessed [here](#).

The Report on the DLT Pilot Regime Regulation can be accessed [here](#).

The Final Report containing the Guidelines on the DLT Pilot Regime can be accessed [here](#).

The ESMA Q&As on the implementation of the DLT Pilot Regime can be access [here](#).

3. CENTRAL BANK OF IRELAND

3.1 Ireland Safe Deposit Box, Bank and Payment Accounts Register - Frequently Asked Questions

On 26 October 2022, the Central Bank published a Frequently Asked Questions on the Ireland Safe Deposit Box, Bank and Payment Accounts Register (**ISBAR**) (**FAQs**). On the same day, the Central Bank published Scope and Reporting Guidelines on ISBAR and

File, Schema and Record Validation Rules, intended to elucidate the reporting obligations for financial institutions and detail the specific requirements introduced by ISBAR.

The FAQs include 17 Questions and Answers laying out the obligations imposed by ISBAR, which will be established and operated by the Central Bank, to ensure full transposition of Directive (EU) 2015/849 (4th **Anti-Money Laundering Directive** or **MLD4**). ISBAR has been introduced to hold information on accounts identifiable by IBAN and information on safe deposit box services provided by credit institutions in Ireland. It will also facilitate access to such information by Financial Intelligence Units (**FIUs**).

The FAQs answer common queries under the following general headings:

- Introduction and description of ISBAR;
- General Reporting Requirements; and
- File Generation and Technical Questions.

On 9 and 13 December 2022, the Central Bank updated the FAQs. A copy of the updated Central Bank ISBAR FAQs is available [here](#).

A copy of the Scope and Reporting Guidelines on ISBAR are available [here](#).

A copy of the File, Schema and Record Validation Rules published by the Central Bank is available [here](#).

3.2 Central Bank (Individual Accountability Framework) Bill 2022

On 7 December 2022, the Central Bank (Individual Accountability Framework) Bill 2022 (**Bill**) completed the Committee Stage in the Dáil. The Bill will soon move into the Report Stage in the Dáil and is expected to be put before the Seanad for its consideration early this year.

Under the Bill, a new individual accountability framework will include the establishment of a “Senior Executive Accountability Regime” (**SEAR**) as well as the introduction of new enforceable conduct standards (or standards of behaviour) expected of regulated entities, their senior executive functions and other staff, enhancements to the fitness and probity regime and a unified enforcement process which aims to break the existing “participation link” whereby the relevant regulated entity must be found to have committed a breach before individuals within it can be held to account.

For more information on the key amendments to the Bill put forward at Committee Stage, please refer to our recent briefing [here](#).

You can access a copy of the text of the Bill and follow the progress of the Bill [here](#).

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

4.1 EBA publishes guidelines on remote customer onboarding

On 22 November 2022, the EBA published its final guidelines (**Guidelines**) on the use of Remote Customer Onboarding Solutions under Article 13(1) of MLD4.

The Guidelines set common EU standards on the development of comprehensive, risk-sensitive initial customer due-diligence (**CDD**) processes in the remote customer onboarding context. The European Commission asked the EBA to issue the Guidelines due to differing supervisory expectations in respect of remote onboarding across Member States. The Covid-19 pandemic accelerated non-face-to-face customer take-on demand, creating more risks and challenges for financial institutions in their CDD processes.

The Guidelines set out steps credit and financial institutions should adhere to when choosing remote customer onboarding tools and what they should do to ensure that the chosen tool is adequate and reliable and enables them to act in accordance with their initial CDD obligations.

The Guidelines will apply 6 months following their publication in the official languages of the European Union on the EBA website.

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

4.2 CJEU judgment on public access to beneficial ownership registers and the implications for AML/CFT rules

On 22 November 2022, the Court of Justice of the European Union (**CJEU**) published a ruling regarding the public access to information on the beneficial owners of companies and certain other entities (**In-Scope Entities**) pursuant to MDL4, deeming such access invalid (the **Judgment**).

In its Judgment, the CJEU found that the unrestricted nature of public access to beneficial ownership registers is repugnant to the fundamental rights to respect for private life and to the protection of personal data, as enshrined in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union (the **Charter**).

The CJEU ruled that the public access constituted an infringement to individual's rights that was not limited to what was strictly necessary and was not proportionate to the objective of the beneficial ownership register of combatting money laundering and terrorist financing. The CJEU noted that the principal of transparency could not be considered an objective of general interest capable of justifying the interference with fundamental individual rights.

On 6 December 2022, the co-rapporteurs of the upcoming 6th Anti-Money Laundering Directive (**MDL6**), released a statement in light of the Judgment, in which they emphasised the importance of access to the beneficial ownership registers by competent authorities and FIUs. The co-rapporteurs condemned certain reactive closures to registers, even to competent authorities in the wake of the Judgment, but vowed that the reformative Judgment would be enshrined in any future beneficial ownership rules.

A copy of the CJEU press release on the Judgment is available [here](#).

A copy of the statement by the co-rapporteurs of MDL6 is available [here](#).

4.3 Guidelines on compliance management and the role and responsibilities of the AML/CFT Compliance Officer

On 1 December 2022, the final guidelines on policies and procedures in relation to compliance management and the role and responsibilities of the AML/CFT compliance officer under Article 8 and Chapter VI of MLD4 (**Guidelines**) came into effect.

The key areas addressed in the Guidelines are:

- Role and responsibilities of the management body in the AML/CFT framework and of the senior manager responsible for AML/CFT;
- Role and responsibilities of the AML/CFT compliance officer; and
- Organisation of the AML/CFT compliance function at group level.

The Guidelines, which were published by the EBA on 14 June 2022 are available [here](#). For more information, please see our Dillon Eustace briefing on this topic which is available [here](#).

4.4 EBA consults on amending the ML/TF Risk Factors Guidelines and new de-risking guidelines

On 6 December 2022, the EBA launched a public consultation (the **Consultation**) amending the guidelines on customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risk associated with individual business relationships and occasional transactions (EBA/2021/02) (the **ML/TF Risk Factors Guidelines**) and proposing new guidelines on the effective management of ML/TF risks when providing access to financial services.

The EBA aim, through these guidelines, to ensure that all customers are not impeded access to financial services without just cause. The draft guidelines set out in the consultation paper have been developed at the European Commission's request following the publication of the [EBA's Opinion and annexed report on de-risking](#), and the EBA's [Opinion](#) on the application of customer due diligence measures to customers who are asylum seekers from higher-risk third countries or territories in 2016.

The first of the draft guidelines under consultation builds on the existing [ML/TF Risk Factors Guidelines](#), adding a new annex setting out what financial institutions should consider when assessing the ML/TF risks associated with a business relationship with customers that are Not-for-Profit organisations (**NPOs**).

The second of these draft guidelines under consultation addresses the effective management of ML/TF by financial institutions when facilitating access to financial services. These draft guidelines identify the relationship between the access to financial services and the obligation of financial institutions to comply with AML/CFT regulations, including situations where vulnerable customers may have valid reasons to be unable to provide traditional forms of identification.

The deadline for submission of comments on the Consultation is 6 February 2023.

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

4.5 European Council agrees its position on MLD6

On 7 December 2022, the Council agreed its position on an anti-money laundering regulation and a new directive which will replace the existing MDL4 (as amended by Directive 2018/843, the fifth AML Directive) (**MLD6**).

The Council's intention for MLD6 is to close existing loopholes allowing for money laundering and terrorist financing by:

- extending the AML rules to the entire crypto sector, obliging CASPs to conduct CDD on their customers for any transactions over 1,000 EUR;
- ensuring that large transactions are not used for ML/TF by limiting large cash payments to a maximum EU-wide limit of 10,000 EUR with Member States being given flexibility to impose a lower maximum limit if they wish;
- having third countries with AML deficiencies listed by the Financial Action Task Force (**FATF**) also being listed by the EU, creating two EU lists, the so called "black list" and a "grey list" reflecting the FATF listings;
- clarifying beneficial ownership rules to allow for more transparency and harmonisation across the EU. Both ownership and control needs to be assessed to identify natural persons. The Council has clarified rules applicable to multi-layered ownership and control structures and for the identification of beneficial owners for different types of entities, including non-EU entities; and
- new third party financing intermediaries i.e. jewellers, horologists and goldsmiths will also be covered by the new AML rules.

MLD6 and the Recast Regulation will form the new strengthened EU AML rulebook.

The next step in the legislative process is to begin triologue negotiations with the European Parliament with the aim of agreeing on a final version of the text.

The Council's press release is available [here](#).

A copy of the proposal for the AML/CFT regulation is available [here](#).

A copy of the proposal for MLD6 is available [here](#).

5. CONFLICT IN UKRAINE

In reaction to Russia's continued military aggression against Ukraine, the European Union has adopted additional economic sanctions against Russia and Belarus which have been introduced through a suite of additional packages adopted by the Council of the European Union announced on 5 October 2022 and 16 December 2022 respectively.

These packages included, amongst others, an extension to the list of those individuals and entities subject to restrictive measures. Commission Regulation (EU) 2022/2474 also provide individual national competent authorities with the power to authorise specific transactions which are necessary for the divestment and withdrawal by European companies from those Russian state-owned entities subject to the transaction ban subject to such conditions as the relevant national competent authority deems necessary.

For a complete overview of the additional measures introduced by the Council on 6 October 2022, please see the related press release which is available from [here](#).

For a detailed overview of the additional measures introduced by the Council on 16 December 2022, please see the related press release which is available from [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 is available [here](#).

6. DATA PROTECTION

6.1 EU – U.S. Data Privacy Framework

On 13 December 2022, the European Commission published a draft commission implementing decision on the adequate level of protection of personal data under the EU-US Data Privacy Framework (**Draft Adequacy Decision**). The new privacy framework is based on a self-certification process similar to the original EU-U.S. Privacy Shield which was struck down by the CJEU in the Schrems II¹ ruling of 16 July 2020.

The Draft Adequacy Decision follows the Executive Order signed by President Biden and regulations issued by the US Attorney General introducing the new binding safeguards to address concerns raised by the CJEU in Schrems II by limiting access to EU data by US intelligence agencies and establishing a redress mechanism, namely the Data Protection Review Court (**DPRC**). In relation to the limiting of access to EU data, the Executive Order requires that US intelligence activities should be subject to appropriate measures for safeguards; that the surveillance activities shall be necessary to advance a validated intelligence activity and only conducted in a manner that is proportionate to the intelligence activity itself. The Draft Adequacy Decision follows the European Commission's publication of Questions and Answers on the new EU-U.S. Data Privacy Framework on 7 October 2022.

¹ Case: C-311/18

US companies will be able to certify their participation in the EU-U.S. Data Privacy Framework by committing to comply with a detailed set of privacy obligations (such as purpose limitation and data retention, as well as specific obligations concerning data security and the sharing of data with third parties).

The Draft Adequacy Decision states that the new privacy framework will provide comparable safeguards to those of the EU. The proposal text has been sent to the European Data Protection Board (**EDPB**) for its opinion.

A copy of the Draft Adequacy Decision is available [here](#).

A copy of the EU-U.S. Data Privacy Framework Q&As are available [here](#).

7. MISCELLANEOUS

7.1 'Path to the Digital Decade': Council adopts key policy programme for EU's digital transformation

On 8 December 2022, the Council announced that they had adopted the 2030 Policy Programme 'Path to the Digital Decade' (**Policy Programme**) outlining the EU's objectives for a digital transformation in line with EU values (**Decision**).

The Decision sets out tangible digital targets that the EU aim to reach by the end of the decade in four core areas:

- strengthening digital skills and education;
- secure and sustainable digital infrastructures;
- digital transformation of businesses; and
- digitalisation of public services.

The Policy Programme will foster investment in areas such as; high-performance computing, common data infrastructure and services, blockchain, low-power processors, pan-European development of 5G corridors.

The European Commission and Member States will develop EU-level and national trajectories respectively, with Member States setting out strategic roadmaps to attain the EU mandated digital targets, with a review expected in 2026. Progress will be monitored with regard to the Digital Economy and Society Index (**DESI**) and will be evaluated in an annual report of the Commission.

The Decision was published in the OJ on 19 December 2022.

A copy of the Decision on the 2030 Policy Programme is available [here](#).

A copy of the Council's press release is available [here](#).

7.2 DORA published in the Official Journal

On 27 December 2022, Regulation (EU) 2022/2554 on digital operational resilience was published in the OJ which creates a harmonised regulatory framework strengthening the information and communication technology (**ICT**) security of financial entities (**DORA Regulation**).

Also published in the OJ on the same date was Directive (EU) 2022/2556 which will, once transposed into national law, amend various other EU directives, including PSD2, to bring them in line with the DORA Regulation (**DORA Directive**).

Together, the DORA Regulation and the DORA Directive create a regulatory framework on digital operational resilience whereby all financial services firms, including UCITS management companies and alternative investment fund managers, will be required to make sure they can withstand, respond to and recover from all types of ICT-related disruptions and threats. The aim of the framework is to replace multiple ICT risk management frameworks with a single unified approach by imposing a common set of standards on in-scope firms to manage and mitigate ICT risks.

The DORA Regulation comprises of five key pillars:

- ICT risk management requirements- Firms will be required to develop and maintain resilient ICT systems to mitigate against cyber risks
- ICT-related incident management, classification and reporting- Firms will be required to implement a process for monitoring and logging ICT-related incidents
- Digital operational resilience testing- Firms will be required to periodically test their ICT risk management framework
- Managing of ICT third-party risk- Firms will be required to implement strong controls around third-party risk management
- Information-sharing arrangements- Firms will be encouraged to share cyber security information with regulators and other financial institutions.

Firms will be required to comply with the legislation in a manner which is proportionate taking into account their size and overall risk profile and the nature, scale and complexity of their services, activities and operations.

Both the DORA Regulation and the DORA Directive will enter into force on 16th of January 2023 and will apply from 17 January 2025.

A copy of Regulation (EU) 2022/2554 is available [here](#).

A copy of Directive (EU) 2022/2556 is available [here](#).

A Dillon Eustace briefing on the new DORA framework is available [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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