



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

Period covered: 1 October 2023 – 31 December 2023

TABLE OF CONTENTS

<u>PAYMENTS</u>	<u>DIGITAL FINANCE & CRYPTO-ASSETS</u>	<u>CENTRAL BANK OF IRELAND</u>	<u>CENTRAL BANK INDIVIDUAL ACCOUNTABILITY FRAMEWORK AND FITNESS AND PROBITY REGIME</u>
<u>AML & CFT</u>	<u>MISCELLANEOUS</u>		

1. PAYMENTS

1.1 EBA updates to the Single Rulebook Q&A on PSD2

On 29 September 2023, the European Banking Authority (**EBA**) updated its Single Rulebook Questions and Answers (**Q&A**) publication on Directive 2015/2366/EU (**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 4 – Definitions;
- Article 72 – Evidence on authentication and execution of payment transactions;
- Article 97 – Authentication; and
- Article 98 - Regulatory technical standards on authentication and communication.

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

1.2 ECON adopts position on PSD3 and PSR

On 13 November 2023, the European Parliament's Economic and Monetary Affairs Committee (**ECON**) published its draft reports (**Draft Reports**) adopting its positions at first reading on the Commission's proposals for a Regulation on payment services in the internal market (**PSR**) and for a Directive on payment services and electronic money services in the internal market (**PSD3**).

PSR and PSD3 proposals were issued by the European Commission on 28 June 2023 to bring payments and the wider financial sector into the digital age.

The next stage of the ordinary legislative procedure in respect of the PSR and PSD3 is for the Council of the European Union to either accept or amend ECON's position.

A copy of ECON's draft report on PSD3 can be accessed [here](#).

A copy of ECON's draft report on PSR can be accessed [here](#).

For more information on the PSR and PSD3 proposals more generally, please refer to our Q2 QLU which can be accessed [here](#).

2. DIGITAL FINANCE & CRYPTO-ASSETS

2.1 ESMA publishes second consultation package on technical standards specifying certain requirements of MiCA

On 5 October 2023, the European Securities and Markets Authority (**ESMA**) launched its second public consultation (**ESMA Second Consultation Package**) on technical standards specifying certain requirements under Regulation (EU) 2023/1114 (**the Markets in Crypto Assets Regulation or MiCA**).

The ESMA Second Consultation Package is the second of three consultation packages that ESMA is launching as part of the MiCA consultation process, with ESMA's first consultation package published in July 2023, and the third and final consultation package expected to be published in Q1 2024.

Under MiCA, ESMA is mandated to develop a number of technical standards and guidelines specifying certain provisions. The ESMA Second Consultation Package contains six draft Regulatory Technical Standards (**RTS**) and two draft Implementing Technical Standards (**ITS**) and covers the following:

- RTS on content, methodologies and presentation of sustainability indicators on adverse impacts on the climate and the environment;
- RTS on measures that crypto-asset service providers (**CASPs**) must take to ensure continuity and regularity in the performance of services;
- RTS on trade transparency;
- RTS on content and format of order book records;
- RTS on the data necessary for the classification of white papers;
- ITS on standard forms and templates for the crypto-asset white papers; and
- ITS on technical means for appropriate public disclosure of inside information.

The deadline for comments on the ESMA Second Consultation Package closed on 14 December 2023. ESMA will publish a report on the feedback received from all three consultation packages and will submit draft technical standards to the European Commission for adoption by 30 June 2024 at the latest.

A copy of the ESMA Second Consultation Package can be accessed [here](#).

More information on ESMA's MiCA consultation process is available [here](#).

2.2 ESMA publishes Report on the DLT Pilot Regime

On 5 October 2023, ESMA published a Report on the Distributed Ledger Technologies (**DLT**) Pilot Regime involving a study (**Study**) on how financial instrument transactions are registered in various DLTs (**Report**). The DLT Pilot Regime (**DLTR**) has applied since 23 March 2023 and allows eligible firms to operate DLT market infrastructures to be used for trading and settlement purposes.

ESMA identified three main DLTs (Corda, Ethereum, and Hyperledger Fabric) that might be used by DLT market infrastructures which are analysed in the Report. The objective of the Study was to understand the implications of the use of DLT/blockchain in the context of transactions in financial instruments when an exemption to Article 26 of Regulation 600/2014 (**MiFIR**) is granted to a DLT market infrastructure.

The Report concludes that there is a very limited number of transaction fields natively defined by the DLTs which leads to significant gaps between the DLTs' transaction fields and the fields currently to be reported under Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing MiFIR (**RTS 22**).

As a result of the findings of the Study, ESMA recommends extending the current RTS 22 transaction reporting schema by some of the DLT transaction fields deemed relevant. ESMA further outlines that proper guideline need to be established to harmonise and standardise transaction reporting for the purpose of the DLTR and to ensure market integrity and stability.

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

2.3 ESMA encourages preparations for a smooth transition to MiCA

On 17 October 2023, ESMA published a letter (**Letter**) and statement (**Statement**) to encourage market participants, Member States and National Competent Authorities (**NCA**s) to prepare for the MiCA's application.

In the Letter, ESMA is seeking regulatory convergence, coordinated action and encourages Member States to focus on the following in the implementation of MiCA:

- ESMA asks that NCAs focus their attention in establishing as early as possible their supervisory procedures related to authorisation regimes, including simplified authorisation procedures for entities already authorised to provide crypto-asset services under national law (if applicable). As discussed at [2.9](#) below, Ireland has chosen not to exercise its discretion for a simplified authorisation process. ESMA calls upon Member States to designate the NCAs responsible for carrying out the functions and duties as required by MiCA and to ensure such NCAs have adequate powers and resources to exercise their supervisory, investigative and enforcement responsibilities. Ireland has designated the Central Bank of Ireland (**Central Bank**) as the NCA in Ireland in respect of MiCA;
- ESMA asks Member States to consider limiting the optional grandfathering clause for existing CASPs. Under Article 143(2) of MiCA, Member States may apply an optional transitional period permitting entities already providing crypto-asset services in their jurisdiction to continue providing those services from 30 December 2024 until as late as 1 July 2026 i.e., for a maximum of 18 months. ESMA is calling for Member States to limit the transitional period to 12 months if Member States choose to exercise this grandfathering period in their jurisdictions. As discussed at [2.9](#) below, Ireland recently announced that it has elected to reduce the transitional period for existing CASPs to 12 months in line with ESMA's Letter.

The Statement is addressed to entities providing crypto-asset services (market participants) and to the NCAs that will be responsible for their supervision (such as the Central Bank), and outlines ESMA's expectations in respect of each from now until the end of the MiCA transitional period (July 2026). Of particular note, ESMA expects market participants to have regard to the following:

- **Full MiCA rights and protections will not apply in the implementation phase of MiCA.** ESMA notes that it is important for crypto investors or potential clients of CASPs in the EU to be aware of the risks inherent in crypto-assets as the MiCA rules will not apply until December 2024. In addition, the grandfathering clause will allow certain CASPs already providing services to provide such services without approval under MiCA for up to 18 months. This means that holders of crypto-assets and clients of crypto-asset service providers may not benefit from full rights and protections afforded to them under MiCA until as late as 1 July 2026.
- **Promoting supervisory convergence.** ESMA is aware that many CASPs including complex global crypto firms will have until the end of the transitional period to fully comply with the MiCA rules and is working to promote supervisory convergence across the EU with coordinated actions from NCAs.
- **Market participants can already start contributing to the effective implementation of MiCA.** ESMA expects market participants to adequately prepare for the implementation of MiCA and to take actions to ensure a smooth transition and implementation of MiCA by:
 - informing NCAs and clients of their transition plans as early as possible;
 - informing clients about the regulatory status of the crypto-assets and/or services they are offering;
 - clarifying the regulatory status of the products and/or services they are offering to avoid confusion with respect to their regulated offerings if market participants are authorised under other sectoral regulations;
 - anticipating MiCA's entry into application by aligning their practices to comply with incoming requirements under MiCA;
 - applying for a MiCA authorisation as soon as possible, noting that without a MiCA authorisation, market participants cannot avail of passporting rights within the EU during the transitional period; and
 - engaging with NCAs on questions concerning the perimeter of MiCA and the application of the framework to their current activities.

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

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

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

2.4 EBA publishes second consultation package concerning MiCA

On 20 October 2023, the EBA published its second consultation package (**EBA Second Consultation Package**) concerning MiCA, including three consultations on draft technical standards and guidance under MiCA regarding issuers of asset referenced tokens (**ARTs**).

The EBA Second Consultation Package includes the following consultation papers:

- Draft RTS on the approval process for white papers for ARTs issued by credit institutions under Article 17(8) of MiCA (EBA/CP/2023/21).

The consultation paper (EBA/CP/2023/21) can be accessed [here](#).

- Draft RTS on the minimum content of the governance arrangements on the remuneration policy under Article 45 of MiCA (EBA/CP/2023/22).

The consultation paper (EBA/CP/2023/22) can be accessed [here](#).

- Draft Guidelines on the minimum content of the governance arrangements for issuers of ARTs (EBA/CP/2023/23).

The consultation paper (EBA/CP/2023/23) can be accessed [here](#).

The EBA's first consultation package concerning MiCA was published on 12 July 2023, as discussed in our previous Quarterly Legal and Regulatory Update which can be accessed [here](#). The EBA's third consultation package concerning MiCA was published on 8 November 2023, as discussed at [2.6](#) below.

MiCA will become applicable for issuers of ARTs on 30 June 2024.

The consultation on the contents of the EBA Second Consultation Package closed on 22 January 2024.

2.5 EBA and ESMA consult on guidelines on suitability assessments under MiCA

On 20 October 2023, the EBA and ESMA published a joint consultation paper (**Consultation Paper**) on two sets of guidelines (**Draft Guidelines**) concerned with:

- i) the suitability assessment of members the management body of issuers of ARTS and of CASPs; and
- ii) the suitability assessment of shareholders and members, whether direct or indirect, with qualifying holdings in issuers of ARTS and in CASPs.

In its related press release, the EBA outline that the Draft Guidelines seek to promote trust in the crypto-asset markets by ensuring that the members of the management body of issuers of ARTs and CASPs, as well as the persons with qualifying holdings, are suitable.

The Draft Guidelines include:

- common criteria to assess the appropriate knowledge, skills and experience of members of the management body as well as their good repute, honesty and integrity and if they are able to commit sufficient time to perform their duties; and
- a common methodology for competent authorities to assess the suitability of the shareholders and members with direct or indirect qualifying holdings for the purposes of granting authorisation as issuers of ARTs or as CASPs and for carrying out the prudential assessment of proposed acquisitions.

The consultation on the Draft Guidelines closed on 22 January 2024.

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

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

2.6 EBA publishes third consultation package concerning MiCA

On 8 November 2023, the EBA opened ten consultations on draft RTS, ITS and guidance under MiCA. The consultations represent the third and final package of consultations relating to technical standards and guidelines under MiCA produced by the EBA.

The EBA has published the following consultation papers (together, **the Third EBA Consultation Package**) on the following matters.

Liquidity. The following consultation papers relate to liquidity matters:

- Draft RTS to specify the highly liquid financial instruments with minimal market risk, credit risk and concentration risk under Article 38(5) of MiCA (EBA/CP/2023/24).

The consultation paper (EBA/CP/2023/24) can be accessed [here](#).

- Draft RTS to further specify the liquidity requirements of the reserve of assets under Article 36(4) of MiCA (EBA/CP/2023/25).

The consultation paper (EBA/CP/2023/25) can be accessed [here](#).

- Draft RTS to specify the minimum contents of the liquidity management policy and procedures under Article 45(7)(b) of MiCA (EBA/CP/2023/26).

The consultation paper (EBA/CP/2023/26) can be accessed [here](#).

- Draft Guidelines establishing the common reference parameters of the stress test scenarios for the liquidity stress tests referred in Article 45(4) of MiCA (EBA/CP/2023/27).

The consultation paper (EBA/CP/2023/27) can be accessed [here](#).

Own funds requirement and stress testing. The following consultation papers relate to the own funds requirement and stress testing:

- Draft RTS to specify the adjustment of own funds requirements and stress testing of issuers of ARTs and of e-money tokens subject to the requirements in Article 35 of MiCA (EBA/CP/2023/28).

The consultation paper (EBA/CP/2023/28) can be accessed [here](#).

- Draft RTS to specify the procedure and timeframe to adjust its own funds requirements for issuers of significant ARTs or of e-money tokens subject to the requirements set out in Article 45(5) of MiCA (EBA/CP/2023/29).

The consultation paper (EBA/CP/2023/29) can be accessed [here](#).

Recovery Plans. The following consultation paper relates to recovery planning:

- Draft Guidelines on recovery plans under Articles 46 and 55 of MiCA (EBA/CP/2023/30).

The consultation paper (EBA/CP/2023/30) can be accessed [here](#).

Reporting transactions. The following consultation papers relate to reporting transactions:

- Draft RTS on the methodology to estimate the number and value of transactions associated to uses of ARTs as a means of exchange under Article 22(6) of MiCA and of e-money tokens denominated in a currency that is not an official currency of a Member State pursuant to Article 58(3) of MiCA (EBA/CP/2023/31).

The consultation paper (EBA/CP/2023/31) can be accessed [here](#).

- Draft ITS on the reporting of ARTs under Article 22(7) of MiCA and on e-money tokens denominated in a currency that is not an official currency of a Member State pursuant to Article 58(3) of MiCA (EBA/CP/2023/32).

The consultation paper (EBA/CP/2023/32) can be accessed [here](#).

- Draft RTS on supervisory colleges under Article 119(8) of MiCA (EBA/CP/2023/33).

The consultation paper (EBA/CP/2023/33) can be accessed [here](#).

The consultations launched under the Third EBA Consultation Package are open for feedback until 8 February 2024.

2.7 European Commission publishes four draft delegated acts under MiCA

On 8 November 2023, the European Commission published four draft delegated acts (**Delegated Acts**) under MiCA which intend to supplement MiCA by outlining:

- criteria for classifying ARTs and e-money tokens (**EMTs**) as significant (Article 43(11) of MiCA);
- criteria and factors to be taken into account by ESMA, the EBA and competent authorities in relation to their intervention powers;
- procedural rules for the EBA to exercise its power to impose fines or periodic penalty payments on issuers of significant ARTs and EMTs; and
- rules on supervisory fees charged by the EBA to issuers of significant ARTs and EMTs.

As discussed in our previous Quarterly Legal and Regulatory Update, the EBA published its technical advice for the European Commission to consider on the criteria for classifying ARTs and EMTs as significant and the fees to be charged by the EBA to issuers of significant ARTs and EMTs.

The European Commission welcomed feedback on the Delegated Acts for four weeks up until 6 December 2023 which it will consider when finalising the Delegated Acts.

The European Commission plans to adopt the Delegated Acts in the second quarter of 2024 before the relevant MiCA provisions begin to apply from 30 June 2024.

The Delegated Acts can be accessed [here](#).

2.8 EBA consults on RTS concerning conflicts of interest under MiCA

On 7 December 2023, the EBA published a consultation paper (EBA/CP/2023/37) on draft RTS specifying the requirements for policies and procedures on conflicts of interest for issuers of ARTs under Article 32(5) of MiCA (**Conflicts of Interest RTS**). The Conflicts of Interest RTS are part of the EBA's third batch of MiCA policy products discussed above at [2.6](#).

The draft Conflicts of Interest RTS require issuers of ARTs to:

- implement and maintain effective policies and procedures to identify, prevent, manage and disclose conflicts of interests;
- give proper consideration to conflicts of interests that could arise when issuers of ARTs manage and invest the reserve of assets;
- ensure that their remuneration policies, arrangements and procedures do not create conflicts of interest;
- obtain certain documentation relating to personal transactions that have to be conducted objectively;
- provide adequate resources to the person responsible for the management of conflicts of interest; and
- adhere to the disclosure requirements in respect of conflicts of interests, which should be accessible to the public.

The present draft RTS on conflicts of interest for issuers of ARTs is closely aligned with the RTS on conflicts of interest for CASPs (which was published as part of ESMA's first consultation package under MiCA in July 2023) to provide for convergence of the requirements. Some differences exist arising from differing activities of the type of entities. Certain elements of the Conflicts of Interests RTS are drawn from existing financial services regimes (i.e., MiFID II and CRD), but are tailored to the specific business model of issuers of ARTs.

The consultation paper on the Conflicts of Interest RTS is open for feedback until 7 March 2024.

The Conflicts of Interest RTS can be accessed [here](#).

2.9 Department of Finance publishes Feedback Statement on MiCA National Discretions

On 14 December 2023, the Irish Department of Finance (DoF) published a MiCA Consultation Feedback Statement concerning its public consultation on the national discretions available under certain provisions in MiCA.

As part of the DoF public consultation, the DoF consulted on four national discretions include in MiCA, two of which the DoF have elected to exercise and two of which the DoF have opted not to exercise.

The MiCA Consultation Feedback Statement outlines that the DoF has elected to exercise national discretions in the following areas:

- **Twelve-month transitional period for existing CASPs under Article 143(3) 9 of MiCA:** Ireland will reduce the duration of the transition ("grandfathering") period which permits existing CASPs to continue to provide services to a 12-month period after the date of application of MiCA, in line with the ESMA guidance.
- **Administrative penalties and other administrative measures under Article 111 of MiCA:** Ireland will exercise its national discretion under Article 111(6) of MiCA to impose higher levels of penalties than those provided for in MiCA. More specifically, for financial penalties, where the 'minimum maximum' amounts are lower under MiCA than they are under the administrative sanctions procedure (**ASP**) already in existence in Ireland under the Central Bank Act 1942, the DoF has agreed that such

amounts should be brought up to the ASP minimums and that all sanctions under the ASP should be available to the Central Bank for MiCA breaches and not just the minimum penalties specified under MiCA.

The DoF has chosen not to exercise the following national discretions:

- **Public disclosure of inside information under Article 88(3) of MiCA:** Ireland will not exercise its national discretion under Article 88(3) of MiCA which allows Member States to require an explanation as to why an entity has delayed its disclosure to the public of inside information to be provided only when specifically requested by the NCA.
- **Simplified procedure for applications for CASP authorisation under Article 143(6):** Ireland will not exercise its national discretion under Article 143(6) of MiCA which enables Member States to implement a “simplified procedure” for CASPs who were authorised under national law to provide crypto-asset services on 30 December 2024.

In the MiCA Consultation Feedback Statement, the DoF have confirmed that the Central Bank will be the national competent authority in Ireland in respect of MiCA.

The DoF will present the necessary secondary legislation required to transpose MiCA into Irish law before 30 June 2024, which will reflect the national discretions to be exercised by Ireland in respect of MiCA.

The MiCA Consultation Feedback Statement can be accessed [here](#).

3. CENTRAL BANK OF IRELAND

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

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

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

The consultation closes on 8 February 2024.

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

3.2 Guidance Note for Payment Institution Accounts Return XBRL (FINREP) 2023

On 15 November 2023, the Central Bank published the following guidance notes relevant to payment institutions (authorised under the European Union (Payment Services) Regulations, 2018):

- i) an updated Guidance Note for Payment Institution Accounts Return XBRL (**FINREP**) (**Updated FINREP Guidance Note**); and
- ii) a Guidance Note for the Payment Institution Supplementary Return XBRL (**Supplementary Return Guidance Note**)

The Updated FINREP Guidance Note aims to assist payment institutions in completing the FINREP return which replaces and updates the Payment Institution Accounts return (**Previous FINREP**). All payment institutions are required to submit their quarterly period end financial statements to the Central Bank by uploading of a valid FINREP return file via the Central Bank’s online Portal system.

The Guidance Note is applicable to both payment institutions and to registered Account Information Services Providers (**AISPs**) and aims to assist firms in completing the Payment Institution Supplementary XBRL Return via the Portal.

A copy of the Updated FINREP Guidance Note can be accessed [here](#).

A copy of the Supplementary Return Guidance Note can be accessed [here](#).

4. CENTRAL BANK INDIVIDUAL ACCOUNTABILITY FRAMEWORK AND FITNESS AND PROBITY REGIME

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

On 16 November 2023, the Central Bank published:

- Finalised guidance on its Individual Accountability Framework (**IAF**);
- Finalised draft regulations which are required to implement (i) the changes to its Fitness & Probity (**F&P regime**) certification regime;
- The senior executive accountability regulation (**SEAR**) and the extension of the F&P regime to in-scope holding companies¹; and
- Feedback statement on Consultation Paper 153 which issued in March 2023 and which provided industry stakeholders with the opportunity to provide feedback on the Central Bank's proposed approach to implementing IAF.

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

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

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

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

4.2 Central Bank publishes finalised administrative sanctions procedures guidelines

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

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

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

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

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

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

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

(A) Central Bank Fitness & Probity Standards

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

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

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

(B) Central Bank Guidance on Fitness and Probity Standards

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

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

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

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

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

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

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

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

The Regulations also amend PCF-16 Branch Manager of branches established outside of the State in order to introduce a material threshold whereby the role only applies where the business arising from the branch amounts to 5% or more of, as applicable, the assets or revenues or gross written premium of the regulated financial service provider.

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

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

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

5.1 FATF Public Consultation: Draft risk-based guidance on beneficial ownership and transparency of legal arrangements

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

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

5.2 EBA guidelines on policies and controls for the effective management of ML/TF risk factors

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

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

The Guidelines:

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

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

5.3 EU list of prominent public functions

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

The List outlines the prominent public functions at EU member state level, at the level of international organisations and at the level of EU institutions and bodies. The List therefore provides clarity on classifications of politically exposed persons or PEPs within EU member states for the purposes of the Fourth Anti-Money Laundering Directive².

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

5.4 EBA consults on 'Travel Rule' Guidelines on preventing abuse of funds and certain crypto-asset transfers for AML and CTF purposes

On 24 November 2023, the EBA published a consultation paper (EBA/CP/2023/35) containing guidelines on preventing the abuse of funds and certain crypto-assets transfers for money laundering (**ML**) and terrorist financing (**TF**) purposes under Regulation (EU) 2023/1113 (the **Wire and Crypto-asset Transfer Regulation** or **WCTR**).

The consultation paper EBA/CP/2023/35 contains new guidelines (known as the '**Travel Rule Guidelines**') which will repeal the 2017 Joint European Supervisory Authorities (**ESAs**) Guidelines (**2017 Guidelines**) issued under Article 25 of Regulation (EU) 2015/847 (**the Wire Transfer Regulation** or **WTR**). The WTR has been recast by the WCTR by extending its scope to transfers of certain types of crypto-assets.

The Travel Rule Guidelines address payment service providers (**PSPs**), intermediary payment services providers (**IPSPs**), CASPs and intermediary CASPs and set out guidelines on the procedures to detect missing or incomplete information accompanying transfers of funds or crypto-assets, and the procedures they should put in place to manage a transfer of funds or a transfer of crypto-assets lacking the required information.

The EBA is mandated to issue the Travel Rule Guidelines under the WCTR and the Travel Rule Guidelines address new matters not previously covered in the 2017 Guidelines such as:

- Determining whether a card, instrument or device is used exclusively for the payment of goods or services as per Article 2(3) point (a) and (5) point (b) of the WCTR;
- Steps to address technical limitations;
- Interoperability of protocols;
- Identifying the specific data points to be transmitted as part of the information required under Article 4(1) and (2) and Article 14(1) and (2) of the WCTR;
- Self-hosted wallets; and
- Obligations on the payer's PSP, payee's PSP and the IPSP where a transfer is a direct debit.

The consultation on the Travel Rule Guidelines is open until 26 February 2024.

The Travel Rule Guidelines will apply from 30 December 2024 when the WCTR becomes applicable.

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

² Directive (EU) 2015/849

5.5 EBA extends risk-based AML/CFT supervision guidance to supervisors of CASPs

On 27 November 2023, the EBA published its Final Report on Guidelines amending Guidelines EBA/GL/2021/16 (**2021 Risk-Based Supervision Guidelines**) on the characteristics of a risk-based approach to anti-money laundering and terrorist financing supervision, and the steps to be taken when conducting supervision on a risk-sensitive basis under Article 48(10) of Directive (EU) 2015/849 (**Amending Guidelines**).

The Amending Guidelines extend the scope of the 2021 Risk-Based Supervision Guidelines to include anti-money laundering and countering the financing of terrorism (**AML/CFT**) supervisors of CASPs as defined in MiCA. The Amending Guidelines:

- emphasise the importance of cooperation among competent authorities, prudential supervisors and other stakeholders;
- highlight the importance of a consistent approach to setting supervisory expectations where multiple competent authorities are responsible for the supervision of the same institutions;
- provide guidance on the sources of information available to competent authorities when supervising crypto-asset service providers;
- set out how competent authorities should determine the type of guidance needed within the sector and how to communicate this guidance in the most effective manner; and
- stress the importance of training to ensure that staff from competent authorities are well trained and have the technical skills and expertise necessary for the execution of their functions, including the supervision of crypto-asset service providers

Competent authorities will have two months from the date of publication of the Amending Guidelines on the EBA website in all official EU languages to report whether they will comply with the Amending Guidelines. The Amending Guidelines will apply from 30 December 2024.

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

5.6 Updating of EU list of high risk countries to remove Cayman Islands and Jordan

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

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

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

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

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

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

5.7 Provisional agreement reached on proposed Anti Money Laundering Authority Regulation

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

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

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

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

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

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

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

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

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

5.8 EBA updates to the single rulebook Q&A on AMLD4

On 22 December 2023, the EBA updated its Single Rulebook Questions and Answers (**Q&A**) publication on the Fourth Anti-Money Laundering Directive³ (the **AMLD4 Single Rulebook Q&A**).

The Q&As in respect of the following matters have been updated:

- Identifying the customer of a Payment Initiation Service Provider (**PISP**) (Article 3 (13) of AMLD4); and

³ Directive 2015/849/EU

- Identifying the customer of a collecting Payment Service Provider (**PSP**) (Article 3 (13) of AMLD4).

The updated AMLD4 Single Rulebook Q&A can be accessed [here](#).

6. MISCELLANEOUS

6.1 ESMA publication on Decentralised Finance in the EU: Developments and risks

On 11 October 2023, ESMA published a document titled “Decentralised Finance in the EU: Developments and risks” (**Decentralised Finance Publication**).

In the Decentralised Finance Publication, ESMA highlights that decentralised finance (**DeFi**) poses real risks to investor protection and while risks to financial stability arising from DeFi are not overly significant now as DeFi remains relatively small in size, the risks posed by DeFi to financial stability require monitoring.

The Decentralised Finance Publication acknowledges that MiCA does not directly address DeFi but notes that the risks and challenges identified in the Decentralised Finance Publication aim to inform the future regulatory review of MiCA as DeFi develops.

A copy of the Decentralised Finance Publication can be accessed [here](#).

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

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

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

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

The Delegated Acts relate to:

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

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

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

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

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

6.3 ESAs launch consultation on second batch of DORA technical standards

On 8 December 2023, the Joint Committee of the ESAs published the second batch of DORA consultations, with the first batch of DORA consultations published earlier this year in June 2023. In total, the ESAs are required to develop 13 policy documents.

The second batch of DORA consultations consists of consultation papers on draft RTS, ITS and guidelines under DORA concerned with the following areas:

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

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

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

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

6.4 Publication of regulation creating a European Single Access Point published in the Official Journal

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

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

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

Under the ESAP Regulation, the ESAP platform must be available by 10 July 2027.

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

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

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

6.5 Extension of virtual meetings for Irish companies until 31 December 2024

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

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

6.6 Conflict in Ukraine

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

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

6.7 IOSCO publishes Final Report on Policy Recommendations for DeFi

On 19 December 2023, the International Organization of Securities Commissions (**IOSCO**) published a Final Report on Policy Recommendations for Decentralized Finance (**IOSCO Final Report**).

IOSCO also published an Umbrella Note on 19 December 2023 (**Umbrella Note**) to explain that the IOSCO Final Report is interoperable with IOSCO's Final Report on Policy Recommendations for Crypto and Digital Asset Markets published on 16 November 2023 (**IOSCO November Final Report**).

In the IOSCO Final Report, IOSCO notes that it expects jurisdictions to apply the IOSCO Standards within their existing or new frameworks for financial instruments that encompass crypto and digital assets, acknowledging that jurisdictions are at different stages in this respect.

The Umbrella Note highlights that both the IOSCO Final Report and the IOSCO November Final Report include recommendations focused on the economic substance and substitutability of the products offered, services provided, and activities engaged in comparison with traditional financial instruments.

The IOSCO Final Report and the IOSCO November Final Report outline that while the recommendations are not directly addressed to market participants, all crypto-asset market participants are strongly encouraged to carefully consider the expectations and outcomes articulated through the recommendations in the conduct of regulated and cross-border activities.

A copy of the IOSCO Final Report can be accessed [here](#).

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

A copy of the IOSCO November Final Report can be accessed [here](#).

6.8 The EBA consults on two sets of guidelines on internal policies, procedures and controls

On 21 December 2023, the EBA launched a public consultation paper on two sets of Guidelines on internal policies, procedures and controls to ensure the implementation of Union and national restrictive measures (**Draft Guidelines**).

The Draft Guidelines include:

- i) a set of draft guidelines addressed to financial institutions and NCAs within the EBA's supervisory remit, outlining regulatory expectations regarding the role of senior management, internal governance and risk management under CRD IV⁴ PSD2⁵, and 2EMD⁶; and
- ii) a set of draft guidelines addressed specifically to payment service providers (**PSPs**), Crypto Asset Service Providers (**CASPs**) and NCAs, stipulating requirements for compliance with restrictive measures when performing transfers of funds and crypto-assets the recast Transfer of Funds Regulation⁷ which will apply from 30 December 2024.

The Draft Guidelines are set to apply from 30 December 2024.

The public consultation on the Draft Guidelines is open until 25 March 2024 and responses can be submitted using the "[Send your comments](#)" function on the EBA's website.

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

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

⁴ Directive 2013/36/EU

⁵ Directive 2015/2366/EU

⁶ Directive 2009/110/EC

⁷ Regulation (EU) 2023/1113

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

Keith Waine

E-mail: keith.waine@dilloneustace.ie

Tel : + 353 1 673 1822

Fax: + 353 1 667 0042

Karen Jennings

E-mail: karen.jennings@dilloneustace.ie

Tel : + 353 1 673 1810

Fax: + 353 1 667 0042

Laura Twomey

E-mail: laura.twomey@dilloneustace.ie

Tel : + 353 1 673 1848

Fax: + 353 1 667 0042

Caoimhe Costello

E-mail: caoimhe.costello@dilloneustace.ie

Tel : + 353 1 673 1856

Fax: + 353 1 667 0042

DISCLAIMER:

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