

# Financial Services Regulatory Update – August 2024 Round Up

10 September 2024

General Updates	
<b>Department of Finance publishes “Ireland for Finance” Progress Report</b>	<p>On 26 August 2024, the Department of Finance published its 2023 progress report (<a href="#">here</a>) in relation to the “Ireland for Finance” strategy. The progress report provides an update on the twelve action measures that were due for reporting last year. The measures are focused on the strategy’s five core themes: (i) fintech; (ii) sustainable finance; (iii) diversity and talent; (iv) regionalisation; and (v) promotion and operating environment.</p> <p>Key achievements highlighted in the report include:</p> <ul style="list-style-type: none"> <li>a new pre-seed funding offer for early stage fintech investors, with 21 new companies supported through Enterprise Ireland’s pre-seed start fund and high potential start-up initiatives;</li> <li>a revised and updated sustainable finance roadmap;</li> <li>relaunch of the annual European Insurance Forum; and</li> <li>promotion and participation in national and international events by enterprise agencies and other stakeholders.</li> </ul>
<b>FSPO publishes Annual Report for 2023</b>	<p>The Financial Services and Pensions Ombudsman (the “FSPO”) has published its annual report for 2023 (<a href="#">here</a>), providing an overview of the FSPO’s activities in 2023.</p> <p>The FSPO received 6,182 complaints in 2023, which represents an increase of 29% compared to 2022. In 2023, the FSPO published over 2,300 legally binding decisions in relation to complaints about the conduct of financial service providers. The annual “Overview of Complaints” (<a href="#">here</a>) and the “Digests of Decisions” (<a href="#">here</a>) provide analyses and summaries of complaints and decisions, and are useful resources for financial service providers and stakeholders.</p>
<b>CCPC launches Consultation on Settlement Procedure</b>	<p>On 12 August 2024, the Competition and Consumer Protection Commission (the “CCPC”) launched a public consultation (<a href="#">here</a>) on a proposed procedure for agreeing settlements in competition law investigations. The draft settlement procedure (<a href="#">here</a>) outlines the CCPC’s proposed approach to entering into discussions and agreeing a settlement</p>

	<p>with parties under investigation for suspected breaches of competition law.</p> <p>The CCPC’s consultation runs until 20 September 2024.</p>
<b>ESG/Sustainability</b>	
<p><b>European Commission issues FAQs on CSRD Provisions</b></p>	<p>On 7 August 2024, the European Commission published a draft Notice (<a href="#">here</a>) containing FAQs on the interpretation of provisions on sustainability reporting introduced by the Corporate Sustainability Reporting Directive (the “<b>CSRD</b>”), and contained in the Accounting Directive, the Audit Directive and Regulation, the Transparency Directive, and Delegated Regulation (EU) 2023/2772 containing the first set of European Sustainability Reporting Standards (the “<b>ESRS</b>”), with the aim of facilitating the implementation of the relevant provisions by in-scope entities. The document also clarifies certain provisions contained in the Sustainable Finance Disclosure Regulation (the “<b>SFDR</b>”).</p> <p>The CSRD was transposed into Irish law by the European Union (Corporate Sustainability Reporting) Regulations 2024, which took effect on 6 July 2024. The new rules will be phased in for financial years 2024 to 2028. Companies already required to report under the Non-Financial Reporting Directive (the “<b>NFRD</b>”) will be required to report in accordance with the CSRD in 2025 based on FY2024.</p>
<b>Capital Requirements/Credit Institutions</b>	
<p><b>Department of Finance consults on National Discretions contained in CRR III</b></p>	<p>On 20 August 2024, the Department of Finance launched a consultation (<a href="#">here</a>) on national discretions contained in the revised Capital Requirements Regulation (“<b>CRR III</b>”).</p> <p>As an EU Regulation, CRR III will take direct effect in EU Member States, including in Ireland. It will take effect in the main from 1 January 2025, though the application of amendments relating to the Fundamental Review of the Trading Book (“<b>FRTB</b>”) has been deferred until 1 January 2026. CRR III, however, leaves certain matters to each Member State’s discretion. Ireland’s decisions on those matters will need to be implemented through national legislation, thus the Department’s current consultation.</p> <p>The Department of Finance is consulting on the following questions:</p> <ol style="list-style-type: none"> <li>1. Should Ireland exercise the discretion under Article 92(3) CRR III to allow institutions to calculate an un-floored total risk exposure amount?</li> <li>2. Should Ireland exercise the discretion under Article 465(5) CRR III to allow institutions to assign the applicable risk weight to exposures?</li> </ol> <p>The Department’s consultation runs until 17 September 2024.</p>

<p><b>EBA issues “No-Action Letter” following Deferral of Application of FRTB Rules in the EU</b></p>	<p>On 12 August 2024, the European Banking Authority (the “<b>EBA</b>”) issued a “no-action letter” (<a href="#">here</a>) recommending that national competent authorities (“<b>NCAs</b>”) should not prioritise any supervisory or enforcement action in relation to amendments to provisions under the Capital Requirements Regulation (“<b>CRR</b>”) setting the boundary between the banking and trading books, or those defining internal risk transfers between the books.</p> <p>Issuance of the letter follows the European Commission’s adoption of a Delegated Regulation (<a href="#">here</a>) that would postpone the application date of market risk reforms, known as FRTB, in the EU by one year until 1 January 2026. This date would align with the anticipated application date of the Basel III standards in the US.</p> <p>The EBA is of the opinion that a front-loaded application of the boundary provisions would lead to global institutions being subject to very different regulatory requirements depending on where risk management is performed, thus resulting in a fragmentation of the regulatory framework.</p> <p>The EBA has also made available a document (<a href="#">here</a>) that: (i) outlines considerations on technical questions and implementation issues arising from the postponement of FRTB application; and (ii) provides clarity on the 2025 supervisory benchmarking exercise.</p>
<p><b>Final Draft RTS amending Delegated Acts under CRR to reflect FRTB Reforms</b></p>	<p>On 13 August 2024, the EBA published a report (<a href="#">here</a>) containing final draft regulatory technical standards (“<b>RTS</b>”) amending Delegated Regulations under CRR on (i) profit and loss attribution requirements; (ii) the risk factor modellability assessment; and (iii) the treatment of foreign exchange (“<b>FX</b>”) and commodity risk in the banking book, to reflect changes introduced by CRR III relating to FRTB.</p> <p>The draft RTS will be submitted to the European Commission for endorsement.</p>
<p><b>Harmonised ECB Rules for Eurosystem Collateral Management</b></p>	<p>On 14 August 2024, the European Central Bank (the “<b>ECB</b>”) published a Guideline (<a href="#">here</a>) on the management of collateral in Eurosystem credit operations. The ECB Guideline contains harmonised rules and arrangements for the mobilisation and management of collateral in Eurosystem credit operations, marking a step towards further financial integration in the euro area and the capital markets union.</p> <p>The ECB has amended (<a href="#">here</a>) its general documentation to account for the new Guideline.</p> <p>The ECB has also made available a document (<a href="#">here</a>) that contains further information for Eurosystem counterparties on the harmonised processes, procedures and arrangements involved in the mobilisation and management of collateral in Eurosystem credit operations.</p>

	<p>The Eurosystem’s harmonised rules and arrangements, and the amendments to the general documentation, will come into effect with the launch of the Eurosystem Collateral Management System (the “<b>ECMS</b>”), which is planned for 18 November 2024. The ECMS is a unified system for managing assets mobilised as collateral in Eurosystem credit operations. It will replace the existing individual collateral management systems belonging to the national central banks of euro area countries.</p>
<p><b>Draft Technical Standards for 2025 Benchmarking Exercise</b></p>	<p>On 9 August 2024, the EBA published (<a href="#">here</a>) final draft implementing technical standards (“<b>ITS</b>”), amending Implementing Regulation (EU) 2016/2070 on the benchmarking of credit risk, market risk and IFRS9 models, for the 2025 benchmarking exercise.</p> <p>The draft ITS specify in detail the framework for EU institutions and competent authorities to carry out the annual supervisory benchmarking foreseen by the Capital Requirements Directive (“<b>CRD IV</b>”); the technical standards are updated annually by the EBA.</p> <p>Changes for 2025 include:</p> <ul style="list-style-type: none"> <li>• In relation to market risk benchmarking, new templates, together with instructions, for the collection of the IMA FRTB risk measures (expected shortfall, default risk charge, and stress scenario risk measure. The EBA is also suggesting to reshape market portfolio and to expand the validation portfolios for the alternative standardised approach.</li> <li>• In relation to credit risk benchmarking, minor changes to clarify the mandatory nature (if applicable) of reporting the probability of default and the loss given default risk parameters concerning the margin of conservatism, regulatory add-on, and downturn component.</li> </ul>
<p><b>Insurance / Insurance Distribution</b></p>	
<p><b>CBI issues “Dear CEO” Letter on Assessment of Consumer Protection Risk Management Frameworks</b></p>	<p>On 29 August 2024, the Central Bank of Ireland (the “<b>CBI</b>”) published a “Dear CEO” letter (<a href="#">here</a>), addressed to insurance undertakings, following the completion of an assessment of undertakings’ consumer protection risk management frameworks.</p> <p>In 2017, the CBI introduced its Consumer Protection Risk Assessment (“<b>CPRA</b>”) model, along with related guidance (<a href="#">here</a>). The CPRA established a new and more rigorous approach for supervisory assessments of regulated firms in relation to conduct and consumer protection risk management.</p> <p>The focus of the CBI’s assessment of insurance undertakings was on “<i>Module 1: Governance and Controls</i>” of the CPRA, with a specific focus on the following elements: (i) consumer protection risk management; (ii) control functions and consumer monitoring; and (iii) consumer reporting.</p>

	<p>Based on the elements assessed, the CBI found overall that, while insurers assessed were at differing levels of maturity and some have more work to do than others to reach the maturity levels required, there is “clear evidence” that the introduction of the CPRA has had a “positive effect” on the industry, including in relation to how consumer risks are identified and managed.</p> <p>However, while firms were found to have made “significant improvements”, consumer protection risk management frameworks were at “varying levels of maturity”. As such, insurance undertakings must now prioritise the development, implementation and embedding of enhancements, as appropriate and proportionate for the firm.</p> <p>Following the publication of its “Dear CEO” letter, the CBI requires that all insurance undertakings review and consider the expectations, findings, and notable practices, set out in the letter, in the context of their own consumer protection risk management frameworks. According to the CBI, firms should complete a gap analysis identifying weaknesses that exist in the design and/or effectiveness of their consumer protection risk management frameworks in respect of the elements assessed by the CBI, and put in place plans to mature their frameworks, where applicable.</p> <p>According to the CBI, plans to address weaknesses in consumer protection risk management frameworks should be presented to the Board by 30 November 2024. Following Board approval, firms are required to implement the required changes, in line with the approved plan, by 30 June 2025.</p> <p>Firms are also required to consider their management responsibility maps and the prescribed responsibilities of pre-approval controlled functions (“PCFs”), and provide the CBI with the name of an individual in a PCF role with accountability for delivery of the expectations set out in the “Dear CEO” letter, by 30 September 2024.</p> <p>Through structured engagement with firms over the coming months, the CBI will continue to focus on firms’ consumer protection risk management frameworks, to ensure that action is being taken following issuance of the “Dear CEO” letter.</p>
<p><b>Corrigendum to Insurance Recovery and Resolution Directive</b></p>	<p>On 28 August 2024, the European Parliament published a corrigendum (<a href="#">here</a>) to the text of the Insurance Recovery and Resolution Directive (the “<b>IRR</b>”), which it adopted earlier in April 2024.</p> <p>The IRRD proposes to establish an EU-wide recovery and resolution framework for insurance firms, similar to that already existing for banks, in order to:</p> <ul style="list-style-type: none"> <li>• harmonise recovery and resolution tools and procedures across the EU, while protecting policy holders, beneficiaries, and claimants, and maintaining financial stability;</li> <li>• promote cooperation between national authorities; and</li> </ul>

	<ul style="list-style-type: none"> <li>enable insurance and reinsurance undertakings to be recovered or wound down without the need for taxpayers to foot the bill.</li> </ul> <p>In-scope entities will be required to submit pre-emptive recovery plans to their national authorities. The IRRD is proposed to apply to: (i) insurance and reinsurance undertakings, and their parent and holding companies; and (ii) insurance holding companies and mixed financial holding companies, and their parent and holding companies, that are established in the EU.</p> <p>The European Parliament approved the IRRD in April 2024. The text awaits formal approval by the Council of the EU, after which it will be published in the Official Journal of the EU. Following its publication and subsequent entry into force, EU Member States and industry will have two years to comply with the reforms.</p>
<p><b>EIOPA consults on Proportionality Measures under Solvency II</b></p>	<p>On 2 August 2024, the European Insurance and Occupational Pensions Authority (“<b>EIOPA</b>”) launched a public consultation (<a href="#">here</a>) on the future implementation of the new proportionality framework under the Solvency II Directive. The consultation relates to: (i) the methodology for classifying insurance undertakings as “small and non-complex”; and (ii) the conditions for granting proportionality measures (i.e. certain reduced requirements) to insurers that do not, by default, fall into the “small and non-complex” category.</p> <p>EIOPA’s consultation runs until 25 October 2024.</p>
<p><b>Investment Firms / MiFID</b></p>	
<p><b>CBI Guidance on Breach and Incident Reporting</b></p>	<p>On 20 August 2024, the CBI published guidance (<a href="#">here</a>) on breach and incident reporting by MiFID investment firms, as required under Regulation 4(2) of the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2023.</p>
<p><b>Investment Funds</b></p>	
<p><b>ESMA Guidelines on Funds’ Names using ESG or Sustainability-related Terms</b></p>	<p>On 21 August 2024, the European Securities and Markets Authority (“<b>ESMA</b>”) published the translations in all official EU languages of its Guidelines (<a href="#">here</a>) on funds’ names using ESG or sustainability-related terms.</p> <p>The Guidelines will start applying three months after this publication (i.e. from 21 November 2024). Within two months of publication (i.e. by 21 October 2024), NCAs must notify ESMA whether they (i) comply, (ii) do not comply, but intend to comply, or (iii) do not comply and do not intend to comply with the guidelines.</p> <p>Fund Managers of funds existing before the date of application of the Guidelines will be expected to comply with the Guidelines in respect of those funds from six months after the date of application (i.e. from 21 May 2025).</p>

	For more information on ESMA’s Guidelines, see our earlier briefing <a href="#">here</a> .
<b>Other</b>	
<b>Selected Consultations, Discussion Papers, Speeches and Reports Published</b>	<p>CBI – Monthly Metrics Report: Guidance Note for Irish Investment Firms (<a href="#">here</a>)</p> <p>EBA – Report on the Fact Finding Exercise on the Creditworthiness Assessment Practices of Non-Bank Lenders (<a href="#">here</a>)</p> <p>EBA – Resolution Convergence Report and 2025 Priorities (<a href="#">here</a>)</p> <p>ECB – Consolidated Banking Data for End-March 2024 (<a href="#">here</a>)</p> <p>EIOPA – Follow-Up Report on EIOPA’s Decision on the Collaboration of Insurance Supervisory Authorities (<a href="#">here</a>)</p> <p>FSPO – Consultation on Strategic Plan 2025-2027 (submissions can be made <a href="#">here</a> up until the deadline of 20 September 2024)</p> <p>International Association of Insurance Supervisors (“<b>IAIS</b>”) – Consultation on Draft Application Paper on Operational Resilience Objectives for the Insurance Sector (<a href="#">here</a>) (consultation runs until 11 October 2024)</p> <p>International Capital Market Association (“<b>ICMA</b>”) – ICMA Repo and Sustainability Survey: Summary Report (<a href="#">here</a>)</p> <p>International Swaps and Derivatives Association (“<b>ISDA</b>”) – ISDA in Review (incorporating link to updated ISDA OTC Derivatives Compliance Calendar): August 2024 (<a href="#">here</a>)</p>
<b>You may also be interested in:</b>	<p>McCann FitzGerald LLP regularly publishes briefings on topics relevant to financial services briefings, among others. You may be interested in the following briefings:</p> <ul style="list-style-type: none"> <li>• Company Law: Changes are Imminent (<a href="#">here</a>)</li> <li>• Corporate Enforcement Authority and Legal Privilege: Changes coming down the tracks (<a href="#">here</a>)</li> <li>• Defamation (Amendment) Bill 2024 – Significant Reform on the Horizon (<a href="#">here</a>)</li> <li>• EDPB Statement on the Role of Data Protection Authorities in the AI Act (<a href="#">here</a>)</li> <li>• Employment Permits Act 2024 – Reform to the Employment Permits Process (<a href="#">here</a>)</li> <li>• EU-US Data Privacy Framework: EDPB publishes FAQs (<a href="#">here</a>)</li> <li>• High Court finds Plaintiffs are ‘Time-barred’ from joining Google in Defamation Action concerning YouTube (<a href="#">here</a>)</li> <li>• ICCL designated as Ireland’s First Qualified Entity under the Representative Actions Act 2023: what to expect (<a href="#">here</a>)</li> </ul>

	<ul style="list-style-type: none"><li>• NIS 2 Implementation by October 2024: Government publishes General Scheme of National Cyber Security Bill (<a href="#">here</a>)</li><li>• Pillar Two Update - Securitisation Entities (<a href="#">here</a>)</li><li>• Recent Supreme Court Case considers Unfair Dismissal (<a href="#">here</a>)</li><li>• Review of the Central Bank of Ireland's Fitness and Probity Regime: What do the Findings mean for Regulated Firms? (<a href="#">here</a>)</li></ul>
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