

## Financial Regulation Advisory

# Financial Services Regulation and Compliance - Cross Sectoral and Other July 2024

Domestically, the CBI set out to update its Fitness & Probity Regime following independent review. At European level, the ESMA publish second final report under MiCAR and two sets of consultations launched under MiCAR.

15 Aug 2024

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## Domestic

### CBI publish Q&A on the Application of the IAF

On 1 July 2024, the Central Bank of Ireland (CBI) published its answers in response to questions raised by stakeholders in relation to the Individual Accountability Framework (IAF).

The responses clarify that control function (CF) role holders who provide incoming services on a freedom of services basis are subject to the conduct standards.

In relation to the senior executive accountability regime (SEAR), the CBI stated that it does not intend to be prescriptive regarding the allocation of prescribed responsibilities to specific PCF role holders. However, it noted that there may be sectoral guidance which may be of relevance.

The CBI also confirmed that while certain firms are not designated persons under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 and therefore, are not legally obliged to have an AML/CFT control framework in place, these firms are not immune to ML/TF risk. On this basis, the CBI stated that firms should still assess their exposure to ML/TF risks as part of their overall risk identification and management framework.

### Deputy Governor Derville Rowland delivers remarks at National Financial Literacy Strategy Stakeholder event

On 5 July 2024, Deputy Governor of the CBI, Derville Rowland, delivered remarks at the National Financial Literacy Strategy Stakeholder event. She discussed the need to improve the financial literacy of consumers in order for them to make informed and effective financial decisions.

The Deputy Governor, noted that there is an imbalance of power between the providers of financial products and consumers, with three elements needed to rebalance the scales from the CBI's perspective,

namely there is:

1. An onus on individual consumers to be as fully informed as possible on the financial decisions they make.
2. A significant onus on financial services firms to secure their interests by ensuring they design and provide suitable products and, where advice is sought, to recommend the most suitable from their range.
3. A significant onus on the State consumer protection framework. To ensure that that firms are protecting consumers' interests, and that remedies are provided where there is failure to do so.

Deputy Governor Rowland stated that the protection of consumers' interests is a key priority for the CBI and advised that the CBI has, and will continue to act, where they identify failures to protect consumers' interest.

### **Independent Fitness & Probity Review**

On 11 July 2024, the CBI published an independent review of its Fitness and Probity (**F&P**) regime undertaken by Mr Andrea Enria, the former Chair of ECB Supervisory Board (the **review**).

Mr Enria made a number of recommendations to improve the operation of the F&P processes by the CBI. In summary, these included:

- Provision of greater clarity and guidance to the industry on the CBI's expectations of regulated firms as part of the CBI's 'gatekeeper process'.
- F&P Standards should be consolidated in a single location to improve firms ease of access, should be enhanced to rectify certain weaknesses in the regime and they should be regularly reviewed and updated.
- Improved governance, including the establishment of an F&P gatekeeping unit with responsibility for the entire gatekeeping process and an enhanced implementation of a risk-based approach for F&P gatekeeping.
- Improvements around decision making, including the establishment of a significant decisions committee.
- A number of changes to the interview stage process, which include a minimum of five working days' notice of an interview to be given with the notification identifying the name and role of all staff members attending from the CBI and the implementation of a set timeframe of 90 days within which applications have to be concluded.
- Enhancements to improve the efficiency of the interview process, including that the CBI should aim to conduct one singular interview.
- Improvements to its approach to withdrawals and feedback, including always providing feedback after an interview.
- Improvements to management information including the removal of exclusions to service standards, committing to a timeframe for the processing of F&P applications and reporting standardised information on at least an annual basis.
- A complaints process should be established specifically for the F&P gatekeeping process.
- A training programme should be developed for the F&P gatekeeping process.

Governor Makhlouf noted that the CBI will accept all of the recommendations in the review. In particular, Governor Makhlouf stated that he:

*very much welcome[s] the emphasis on the critical role of supervisory judgement in promoting good governance within the financial sector and the necessity to uphold procedural fairness as its foundation.*

### **CBI industry briefing on MiCAR**

On 18 July 2024, the Deputy Governor of the CBI, Derville Rowland delivered the opening remarks at an Industry Briefing on the Markets in Crypto-Assets Regulation (**MiCAR**) by the CBI.

The Deputy Governor, delivering the opening remarks, noted that technological innovation will be a core focus for the CBI, with its objective being to ensure the regulatory environment enables the potential benefits of innovation for consumers, businesses, and society to be realised, while the risks are effectively managed and mitigated.

To ensure the effective implementation of MiCAR, Deputy Governor Rowland stated that good culture and conduct risk management will be vital. The CBI highlighted the importance of ‘tone from the top’ and emphasised that effective organisational culture builds on standards, such as professionalism, honesty, integrity, and accountability to ensure fair outcomes are delivered to consumers.

The Deputy Governor also highlighted that governance and safeguarding of client assets will be critical considerations for the CBI. Finally, she noted that the CBI will be engaging bilaterally with participants over the coming months.

## **European**

### **FATF open public consultation on Money Laundering National Risk Assessment guidance update**

On 2 July 2024, the Financial Action Task Force (**FATF**) launched a public consultation on its Money Laundering National Risk Assessment (**NRA**) guidance update.

FATF are updating its NRA guidance to make it more effective and useful for all stakeholders. The consultation aims to provide feedback for consideration by FATF prior to revising and finalising its guidance.

The consultation is set to run until 22 July 2024.

### **Second Final Report under MiCA published**

On 3 July 2024, the European Securities and Markets Authority (**ESMA**) published its second final report (the **report**) under Regulation (EU) 2023/1114 (Markets in Crypto-Assets Regulation (**MiCA**)). It covers eight draft technical standards. The report aims to provide greater transparency for retail investors, clarity for providers on the technical aspects of disclosure and record-keeping requirements and provides data standards to facilitate supervision by national regulators. It includes the following draft technical standards:

- sustainability indicators for crypto-asset consensus mechanisms
- business continuity measures for crypto-asset service providers (**CASPs**)
- trade transparency
- content and format of orderbooks and record-keeping by CASPs
- machine readability of white papers and the register of white papers
- public disclosure of inside information

Upon finalisation of the draft technical standards, they will be submitted to the European Commission (**EC**) at which the EC will have three months to determine whether they should be adopted.

### **EBA draws attention to the application of MiCAR**

On 5 July 2024, the EBA published a statement for the attention of persons issuing or offering to the public, or seeking admission to trading of, asset-referenced tokens (**ARTs**) and e-money tokens (**EMTs**) and for consumers. The EBA also set out key topics for supervisory attention across the EU for issuers of ARTs/EMTs in 2024/2025.

The EBA highlighted that Regulation (EU) 2023/1114 (MiCAR) entered into application on 30 June 2024. It also reminded persons of the availability of the technical standards and guidelines on its website. The EBA also highlighted the factors that consumers can check before deciding whether to acquire an ART, EMT or other type of crypto-asset and reminded consumers of the risks involved with acquiring crypto-assets that have not been issued in accordance with the applicable provisions of MiCAR.

The EBA will continue to work with competent authorities to promote cooperation and high standards of holder protection.

### **ESAs publishes consultation paper on MiCAR**

On 12 July 2024, the ESAs published a consultation paper on guidelines under Regulation (EU) 2023/1114 (MiCAR).

The guidelines propose a standardised test to ensure a consistent approach to the classification of crypto-assets. The guidelines provide templates for explanations and legal opinions in relation to the regulatory classification of crypto-assets in the following cases:

- ARTs: the white paper for the issuance of ARTs is required to be accompanied by a legal opinion which outlines the classification of the crypto-asset.
- Crypto-assets that are not ARTs or EMTs under MiCAR: the white paper for crypto-assets is required to be accompanied by an explanation of the classification of the crypto-asset.

The consultation is set to run until 12 October 2024.

### **EBA open consultation on draft guidelines under MiCAR**

On 15 July 2024, the EBA launched a consultation on draft guidelines on reporting requirements to assist competent authorities and the EBA in performing their duties under Regulation (EU) 2023/1114 (MiCAR).

The EBA has found that there are data gaps under the specific information required to be reported under MiCAR and as a result is consulting on draft guidelines which will specify common templates and

instructions for issuers to provide the EBA and competent authorities with the necessary information to close these gaps. The guidelines include common templates and instructions that should be used by issuers to collect the data they need from the relevant CASPs.

The consultation is set to run until 15 October 2024 with a virtual public hearing set to take place on 20 September 2024.

### **Second batch of policy products published by the ESAs under DORA**

On 17 July 2024, the ESAs published the second batch of policy products under the Digital Operational Resilience Act (Regulation (EU) 2022/2554) (**DORA**).

The final draft regulatory technical standards (**RTS**) and implementing technical standards (**ITS**) include:

- RTS and ITS on the content, format, templates and timelines for reporting major ICT-related incidents and significant cyber threats
- RTS on the harmonization of conditions enabling the conduct of the oversight activities
- RTS specifying the criteria for determining the composition of the joint examination team (**JET**)
- RTS on threat-led penetration testing (**TLPT**)

The set of guidelines include:

- guidelines on the estimation of aggregated costs/losses caused by major ICT-related incidents
- guidelines on oversight cooperation

The ESAs have adopted the guidelines. The final draft RTS and ITS have been submitted to the European Commission who are set to review these and adopt them in the coming months.

### **ESAs publish joint final report on the draft technical standards on subcontracting under DORA**

On 26 July 2024, the ESAs published their joint final report on the draft **RTS**, which specify how to determine and assess the conditions for subcontracting information and communication technology (**ICT**) services that support critical or important functions under DORA.

The final draft RTS focus in particular on:

- The requirements which apply during the lifecycle of contractual arrangements between financial entities and ICT third party service providers.
- The requirements regarding assessing the risks associated with subcontracting during the precontractual phase, including the due diligence process; and
- The requirements relating to the implementation and management of sub-contractual arrangements.

The final draft RTS will be submitted to the European Commission for adoption.

### **EBA extends existing Joint Committee guidelines on complaints handling to credit servicers**

On 24 July 2024, the EBA published its final guidelines that extend the existing Joint Committee guidelines on complaints handling (**JC guidelines**) to credit servicers under the new Directive (EU)

2021/2167 (**Credit Servicers Directive**). When handling complaints from borrowers, credit servicers are now required to apply the same effective and transparent procedures that have been applied since 2014 to other firms in the banking, insurances and securities sectors.

The consolidated JC guidelines cover:

- the complaints management policy
- the complaints management function
- the registration of complaints
- the reporting to the competent authorities or ombudsman
- the internal follow-up
- the provision of information to the complainant
- the procedures for responding to complaints

The consolidated version of the guidelines are set to apply three months after the entry into force of the proposed Payment Services Regulation, which is expected sometime in 2025.

For more information on these topics plpurport ease contact any member of A&L Goodbody's [Financial Regulation Advisory](#) team.

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