



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

Period covered: 1 July 2022 – 30 September 2022

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## 1. PAYMENTS

### 1.1 Commission Delegated Regulation amending the regulatory technical standards laid down in Delegated Regulation (EU) 2018/389 as regards the 90-day exemption for account access

On 3 August 2022, the European Commission adopted a delegated regulation amending the regulatory technical standards (RTS) as regards the 90-day exemption for account access under Directive (EU) 2015/2366 (PSD2).

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 draft delegated regulation is currently under scrutiny and will enter into force if the European Parliament or the Council of the EU do not object to it.

A copy of the draft delegated regulation can be accessed [here](#).

## 2. DIGITAL FINANCE & CRYPTO-ASSETS

### 2.1 Application of the Principles for Financial Market Infrastructures to stablecoin arrangements

On 13 July 2022, the Bank for International Settlements' Committee on Payments and Market Infrastructures (CPMI) and the International Organisation of Securities Commissions (IOSCO) published joint guidance on the application of Principles for Financial Market Infrastructures (PFMI) to stablecoin arrangements (SA) that are considered systemically important financial market infrastructures (FMI). The guidance note does not cover issues specific to stablecoins denominated in or pegged to a basket of fiat currencies (multicurrency SAs). They will be covered in future reports.

The Guidance does not provide comprehensive guidance on PFMI but covers the following subset of principles:

- Governance – Requires clear and direct lines of responsibility and accountability, allowance for timely human intervention, and the SA's ownership structure and operation must allow it to observe the PFMI irrespective of the arrangements of other independent functions.
- Comprehensive risk management – Regular reviews of material risks that the FMI function bears and that pose risks to other SA functions and the entities that perform them should be exercised by systemically important SAs. The SA should develop appropriate risk-management frameworks paying particular focus to implementing appropriate mitigations.
- Settlement finality – Clear and certain final settlement should be provided by a systemically important SA by the end of the value date, at a minimum, regardless of the settlement method used. The point at which a transfer of a stablecoin through the operational method becomes irrevocable should be defined, there should be clear basis acknowledging the finality of a transfer and mechanisms should be in place to prevent misalignment between the state of the ledger and legal finality.
- Money settlements – A stablecoin used by a systemically important SA for money settlements should have minimal credit or liquidity risk. When assessing risk the SA should consider whether the stablecoin provides its holders with a direct legal claim on the issuer and or on the title to or interest in the reserve assets. An SA should ensure clarity and enforceability of claims, the nature and sufficiency of its reserve assets, the clarity, robustness and timeliness of converting the stablecoin

into other liquid assets, the sufficiency of the regulatory and supervisory framework that applies to the issuer and the existence of risk controls that could reduce credit and/or liquidity risks.

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

## 2.2 European Union (Markets in Financial Instruments) (Amendment) (No. 4) Regulations 2022 [S.I. No. 443 of 2022]

On 6 September 2022, Minister Paschal Donohue signed the European Union (Markets in Financial Instruments) (Amendment) (No.4) Regulations into Irish law.

The definition of 'financial instrument' in Regulation 3 of the principal regulations has been updated to specifically include securities issued by means of distributed ledger technology (DLT). This update clarifies that the scope of the regime under Directive (EU) 2014/65 (MiFID II) applies to tokenised securities.

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

## 2.3 Report on the DLT Pilot Regime

On 27 September 2022, the European Securities and Markets Authority (ESMA) published a report on the DLT pilot regime (the "DLT Pilot"). The DLT Pilot aims to develop the trading and settlement for "tokenised securities". The DLT Pilot entered into force on 23 June 2022 and will start to apply from 23 March 2023.

On review of ESMA's call for evidence on the DLT Pilot from January 2022, ESMA has clarified that it does not consider it necessary to amend the RTS on transparency and data reporting requirements under Regulation (EU) 600/2014 (MiFIR). ESMA restricted their recommendations to compensatory measures that National Competent Authorities should request to ensure the integrity, completeness, consistency, usability, and comparability of the supervisory data collected from DLT Market Infrastructures.

ESMA stated that the next steps are to work supervisory guidance to clarify elements of the RTS on transparency and data reporting requirements. ESMA will also issue guidance on questions received by various stakeholders on the DLT Pilot to contribute to the convergent application of the DLT Pilot.

Please see attached report [here](#).

## 3. CENTRAL BANK OF IRELAND

### 3.1 Guidance Note for the Electronic Money Institution Supplementary Return XBRL

On 1 July 2022, the Central Bank of Ireland (Central Bank) published a guidance note for the electronic money institution supplementary return XBRL (EIS XBRL) relevant for all electronic money institutions (EMI) authorised under the European Communities (Electronic Money) Regulations, 2011 (as amended) (Electronic Money Regulations 2011) transposing Directive 2009/110/EC (EMD2).

This new EIS XBRL return replaces the previous Supplementary Return and the format of reporting is changing from web-form to XBRL for the quarterly E-Money Institution Accounts returns and Supplementary Returns from the reporting period ending 30 September 2022.

The guidance note provides instruction on how to complete the EIS XBRL return which is comprised of the following sections; statement of capital adequacy; analysis of own funds; user's funds and safeguarded user's funds; safeguarded fund's detail;

transaction volume; agency appointments; distributor appointments; general; ownership structure (three parts); qualifying shareholders, and; conduct of business.

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

### 3.2 Central Bank register first VASP

On 19 July 2022, the Central Bank registered Gemini Digital Asset Limited as a Virtual Asset Service Provider (**VASP**) for anti-money laundering (**AML**) purposes.

This is the first registration of its kind following the coming into force of the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2021 in April 2021, which amended Irish AML Legislation to include VASPs within the definition of a “designated person” and consequently within the scope of AML and countering the financing of terrorism (**CFT**) obligations.

The Central Bank has since registered a second entity as a VASP, Zodia Custody Ireland Limited.

The Central Bank’s VASP register can be accessed [here](#).

### 3.3 Publication of the Central Bank (Individual Accountability Framework) Bill 2022

On 28 July 2022, the Central Bank (Individual Accountability Framework) Bill 2022 (**Bill**) was published by the Department of Finance. The Bill’s principal purpose is to confer powers on the Central Bank to strengthen and enhance individual accountability in the Irish financial services industry by prescribing responsibilities and providing for the allocation of responsibility and accountability for the management and operation of firms regulated by the Central Bank.

The new Senior Executive Accountability Regime (**SEAR**):

- introduces new conduct standards for regulated firms and their management and staff;
- makes enhancements to the existing Fitness and Probity Regime; and
- strengthens the Central Bank’s Administrative Sanctions Procedure.

While it is not yet clear when the Bill will be enacted, the Central Bank has indicated that it will consult key stakeholders on implementation and operation of the framework once the Bill has been enacted through the publication of draft implementing regulations and guidance for public consultation.

A copy of the Bill can be accessed [here](#) and the explanatory memorandum can be accessed [here](#).

For more information, please see our Dillon Eustace briefings on this topic “[The Central Bank \(Individual Accountability Framework\) Bill 2022 is published](#)” August 2022 and “[Individual Accountability Framework and SEAR – Key Questions](#)” October 2021.

### 3.4 Central Bank Outsourcing Register Template and Guidance Note

On 9 August 2022, the Central Bank published its long-awaited outsourcing register templates and also released associated guidance notes for different market participants addressed by its Cross-Industry Guidance on Outsourcing which was published and has applied since December 2021.

All regulated financial service providers whose PRISM Impact Rating is Medium Low or above (or its equivalent) will be required to submit their completed outsourcing register template to the Central Bank via the Online Reporting System (ONR). The deadline for the submission was initially 7 October 2022 but has since been extended to 19 October 2022.

The Investment Outsourcing Register template and Guidance Note on Outsourcing Register Template for Payments & E-money Firms will be relevant for payment service providers and electronic money institutions.

The outsourcing register templates and guidance notes are available from the Central Bank's website [here](#). For more information on the information requirements for the outsourcing register return, please see our Dillon Eustace client briefing [here](#).

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

### 4.1 Central Bank publishes AML Bulletin on the registration process for VASPs

On 11 July 2022, the Central Bank published an AML Bulletin on the VASP sector, to assist firms applying for registration as a VASP and identifying common weaknesses in applications submitted to the Central Bank to date.

The following areas have been identified where applicants have not met the expectations of the Central Bank within the registration process:

- A number of firms submitted incomplete applications;
- A number of firms failed to adequately assess or document the money laundering (ML) and terrorist financing (TF) risks as they pertain to the firm and its customers;
- A number of firms did not have sufficiently detailed (or tailored) policies and procedural documentation to demonstrate compliance with their obligations under the CJA;
- Some firms did not show compliance with the customer due diligence (CDD) requirements under the CJA or applicable EU financial sanctions screening which is expected of all financial institutions;
- Where firms operate on an outsourcing model, the Central Bank noted that a number of firms did not submit an outsourcing policy or other agreement and some firms failed to demonstrate sufficient oversight of the outsourced activities.
- Some firms also failed to submit (or delayed in submitting) Individual Questionnaires (IQs) required for persons performing Pre-approval Control functions (PCF).

The Central AML Bulletin also clarifies that VASPs, like other supervised financial institutions will be subject to the Central Bank levy and that it expects applicants to have a physical presence in Ireland with at least one member of senior management present in Ireland.

You can access the Central Bank's AML Bulletin on the VASP sector [here](#). Please also find our Dillon Eustace client briefing on the topic [here](#).

### 4.2 Transparency on ownership of Safe-Deposit Boxes and Accounts

On 6 September 2022, Minister Paschal Donoghue signed the European Union (Anti-Money Laundering: Central Mechanism for Information on Safe-Deposit boxes and Bank and Payment Accounts) (Amendment) Regulations 2022 (**Amending Regulations**) into Irish law amending the European Union (Anti-Money Laundering: Central Mechanism for Information on Safe-Deposit boxes and Bank and Payment Accounts) (the **Principal Regulations**). The Regulations give further effect to Directive (EU) 2015/849.

Regulation 4 of the Principal Regulations has been amended so that a reference to an account or safe-deposit box is a reference to an account or safe-deposit box, as the case may be, held by a credit institution on or after 3 February 2022.

Regulation 5 of the Principal Regulations has been amended so that the beneficial owner of a customer account must be identified by forename and surname, date of birth, and address.

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

## 5. MISCELLANEOUS

### 5.1 IOSCO publishes its crypto-asset roadmap for 2022-2023

On 7 July 2022, the International Organization of Securities Commissions (IOSCO) published its crypto asset roadmap for 2022-2023. The IOSCO board-level fintech taskforce (FTF) develops, oversees, delivers and implements IOSCO's regulatory agenda for fintech and crypto assets. The report focuses on the regulatory policy agenda and work programme of the IOSCO for the next 12 to 24 months.

The roadmap is split into two workstreams – crypto and digital assets (CDA) and decentralised finance (DeFi).

In respect of CDA:

- Part 1 (running from Q2-Q4 2022) will look closely at fair and orderly trading, transparent markets, suitability and market manipulation.
- Part 2 (running from Q4 2022-Q1 2023) will address safekeeping, custody and soundness.
- A public report on CDA will be published in Q4 2023 (Part 3 of the roadmap).

In respect of DeFi, the IOSCO wishes to build on the DeFi Report and the aim is to develop a shared understanding of emerging DeFi trends and risks with:

- Part 1 and 2 (running from Q2-Q4 2022) will see the IOSCO DeFi WG examine the IOSCO principles and standards to explore how they could apply to common activities, products, and services in DeFi (Part 1) and to review and highlight the links between DeFi, stablecoins, and crypto-asset trading, lending and borrowing platforms, as well as the interactions of DeFi with broader financial markets (Part 2).
- A public report on DeFi will be published in Q4 2023 (Part 3 of the roadmap).

A copy of the crypto-asset roadmap can be accessed [here](#) and the IOSCO media release on the roadmap can be accessed [here](#).

### 5.2 Protected Disclosures (Amendment) Act 2022

On 21 July 2022, the Protected Disclosures (Amendment) Act 2022 (the **Act**) was signed into law. The Act transposes Directive (EU) 2019/1937 (**Whistleblowing Directive**) and amends the Protected Disclosures Act 2014. The Act will broaden the provisions of the current Irish protected disclosures regime, building on the 2014 legislation. A commencement order will be required to bring the 2022 Act into force.

The Act introduces, among other things, an obligation on Irish payment service providers and electronic money institutions to establish internal reporting channels and procedures for their workers to make protected disclosures. The Act provides that internal reporting channels and procedures can be operated either internally by a person or department designated by the employer or alternatively by an external third party authorised by the employer. Consequently, Irish payment institutions and electronic money institutions will have to update their current whistleblowing policies and internal reporting procedures to bring them in line with the new provisions of the Act once the relevant commencement order has been signed into law.

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

### 5.3 Central Bank releases regulations on levies

On 31 August 2022, the Central Bank Act 1942 (Section 32D) Regulations 2022 (S.I. No. 427 of 2021) (**Regulations**) came into operation setting out the levy contribution payable by financial service providers in respect of the "levy period" meaning the period 1 January 2021 to 31 December 2021.

Category N of the Schedule to the Regulations addresses the amount of the levy contribution for payment institutions and e-money institutions.

The text of the Regulations can be accessed [here](#).

#### 5.4 EBA publishes its work programme for 2023

On 29 September 2022 the EBA published its work programme for 2023.

Activity 8 relates to Innovation and Fintech (which includes developments on the proposed Regulation on digital operational resilience for the financial sector (**DORA**) and the proposed Regulation on Markets in Crypto-assets (**MiCA**)). Under this activity the EBA will conduct research and issue thematic publications in 2023 to foster harmonisation and identify regulatory gaps or obstacles relating to financial innovation. The EBA will be given new regulatory and supervisory tasks under DORA and MiCA (which subject to final adoption of the legal texts should apply from 2024/2025). It will continue to monitor the ICT and cyber landscape and crypto-assets within the context of the financial sector. The EBA will also develop a number of RTS supplementing the proposed regulations.

Activity 9 relates to payment services, consumer and depositor protection. In respect of payment services, the EBA will continue to monitor the application of RTS on strong customer authentication and common and secure communication (SCA&CSC), including the amended 90-day SCA exemption (see [Section 1.1](#) above for developments on the SCA exemption), monitor the implementation of the limited network exemption by competent authorities following the EBA Guidelines, and continue to support competent authorities and market participants through review of aspects of PSD2 and updating the Single Rulebook Q&A on PSD2.

The EBA work programme for 2023 can be accessed [here](#).



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

**Keith Waine**

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

Tel : + 353 1 673 1822

Fax: + 353 1 667 0042

**Karen Jennings**

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

Tel : + 353 1 673 1810

Fax: + 353 1 667 0042

**Laura Twomey**

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

Tel : + 353 1 673 1848

Fax: + 353 1 667 0042

**Caoimhe Costello**

E-mail: [caoimhe.costello@dilloneustace.ie](mailto:caoimhe.costello@dilloneustace.ie)

Tel : + 353 1 673 1856

Fax: + 353 1 667 0042

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