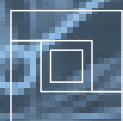


Investment Firms Quarterly Legal and Regulatory Update

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1 MIFID II

1.1 ESMA updates manual on post-trade transparency and opinion on assessment of transparency waivers under MiFID II and MiFIR

On 16 October 2024, the European Securities and Markets Authority (**ESMA**) published an updated version of its manual on post-trade transparency under MiFID II¹ and MiFIR²:

The manual, first published in July 2023, now provides new guidance on the naming convention of the fields in the post-trade transparency reports and makes amendments where necessary to accommodate the arrival into force of MiFIR II³. Section 2 of the manual contains a summary table of updates.

On the same day, the opinion on the assessment of pre-trade transparency waivers for equity and non-equity instruments was also updated to emulate amendments made by MiFIR II. ESMA similarly updated its Q&As on transparency and market structure issues to align with the proposed changes.

The updated manual can be found [here](#). The updated opinion can be found [here](#).

ESMA's Q&As can be accessed [here](#).

The ESMA press release can be found [here](#).

1.2 ESMA consults on amendments to MiFID research regime

On 28 October 2024, ESMA launched a consultation on amendments to the research provisions under the MiFID II Delegated Directive⁴. The consultation comes as a response to the introduction of the Listing Act⁵, which enables joint payments for execution services and research for all issuers, notwithstanding the degree of market capitalisation of the issuers under the research.

The consultation paper puts forward proposals to ensure that:

- robust criteria are considered and applied in the annual research quality assessment; and
- firms comply with best execution requirements, irrespective of the remuneration methodology for joint payments for execution services and research.

The proposals within the consultation paper aim to align MiFID II with the new payment option offered by amending Article 13 of the MiFID II Delegated Directive. Therefore, the consultation mainly targets research providers, investment firms and investors.

Consultation feedback can be provided until 28 January 2025.

Once it has considered this feedback, ESMA aims to provide its technical advice to the European Commission in Q2 2025.

The consultation paper can be found [here](#).

The press release can be found [here](#).

¹ Directive 2014/65/EU

² Regulation 600/2014/EU

³ Regulation 2024/791/EU

⁴ Commission Delegated Directive (EU) 2017/593

⁵ Comprising Regulation (EU) 2024/2809 and Directive (EU) 2024/2811

1.3 ESMA and EIOPA publish letter relating to the EU Retail Investment Strategy

In April 2024, the Parliament adopted its negotiating position on the European Commission's proposal on the EU Retail Investment Strategy (**RIS**) while in June 2024, the Council adopted its finalised position on the proposal, paving the way for trialogue negotiations to begin in 2025.

On 13 November 2024 ESMA and EIOPA published a letter which they sent to the European Commission relating to the RIS (**Letter**). In that Letter they:

- recommended that the introduction of any investment/saving product for retail investors (as recommended by the Council in its conclusions on the capital markets union (amongst other topics)) be built into the current RIS proposal to avoid multiple revisions of the retail investment framework in a short period of time;
- advised that they did not agree with the proposals put forward by the Council and the Parliament on the RIS in which value for money benchmarks created by ESMA and EIOPA would be used only as a supervisory tool for national competent authorities instead of mandating fund management companies to use such benchmarks in their pricing processes to satisfy themselves that the fund will deliver value for money to investors (as had been put forward by the European Commission in its proposal)
- supported the Parliament's proposal to introduce an online comparison tool for PRIIPS to allow investors access to "an unbiased source of information on all relevant product features".

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

1.4 ESMA publishes final reports concerning proposed amendments for the revised MiFID II and MiFIR regime

On 16 December 2024, ESMA published the following final reports:

- **Final report on non-equity trade transparency, the availability of information on a reasonable commercial basis and revisions made under MIFIR II to MiFIR reference data:** The final report has been published following a consultation in May 2024 with proposals to amend RTS on the mandates for bonds, structured finance products and emission allowances. The final report includes (1) an RTS amending Delegated Regulation (EU) 2017/583 (**RTS 2**) and (ii) a new RTS on reasonable commercial basis (**RTS on RCB**). ESMA has stated that it continues to work on the review of Commission Delegated Regulation (EU) 2017/585 (**RTS 23**) on supply of reference data and will publish its final report separately at a later stage next year.

The final report can be accessed [here](#).

- **Final report relating to equity transparency measures under MiFIR II and MiFID III⁶:** Following a consultation in July 2024, ESMA proposes amending technical advice provisions under Commission Delegated Regulation (EU) 2017/567 as well as amending Commission Delegated Regulation (EU) 2017/587 (**RTS 1**).

The final report can be accessed [here](#).

- **Final report on proposed amendments to certain technical standards for commodity derivatives under MiFID III:** Following a consultation in May 2024, ESMA proposes amendments to commodity derivatives provisions under MiFID II. The changes propose amending Commission Delegated Regulation (EU) 2022/1299 (**RTS on position management controls**), Commission Implementing Regulation (EU) 2017/10934 (**ITS 4**) and the article on position reporting in Commission Delegated Regulation (EU) 2017/565 (**MiFID II Delegated Regulation**).

The final report can be accessed [here](#).

⁶ Directive (EU) 2024/790

ESMA has submitted all three final reports to the European Commission. The Commission has three months to consider the reports and decide whether to endorse the proposed amendments.

1.5 ESMA publishes final report on technical standards related to Consolidated Tape Providers and DRSPs

On 16 December, ESMA published its final report on technical standards relating to consolidated tape providers and data reporting service providers (**DRSPs**) under the MiFIR review. This follows ESMA's consultation on the technical standards in May 2024.

The final report includes:

- Section 2 contains draft RTS on input/output data relating to the mandate under Article 22b of MiFIR requiring ESMA to specify: (a) the minimum requirements for the quality of transmission protocols, (b) the data to be disseminated by the consolidated tape provider, (c) what constitutes as close to real time as technically possible, and (d) the data to be transmitted to the consolidated tape provider. ESMA notes that there are changes from its original proposal, including regarding input data formats, consolidated tape provider's responsibilities on input data quality and latency requirements.
- Section 3 contains draft RTS on the revenue redistribution scheme relating to the mandate under Article 27h of MiFIR which requires ESMA to specify the methodology relied on by an equity consolidated tape provider to redistribute revenues to data contributors. Furthermore, the RTS also include the criteria under which the consolidated tape provider can suspend data contributors from revenue redistribution. The final RTS include several refinements to allow more flexibility to the consolidated tape provider in the application of such scheme.
- Section 4 contains draft RTS on clock synchronisation relating to the mandate under Article 22c of MiFIR which transposes the clock synchronisation requirement previously set out in MiFID II. ESMA's draft RTS specifies the level of accuracy to which business clocks must be synchronised, including UTC traceability requirements and maximum divergence levels. The final draft RTS largely aligns with the original proposal.
- Section 5 contains technical standards on the authorisation of DRSPs relating to the mandates under Articles 27d and 27db of MiFIR. This includes ESMA's proposal: (i) to amend the existing RTS 13 and the related ITS to exclude consolidated tape providers; and (ii) for a new RTS and a new related ITS specifically for the authorisation of consolidated tape providers. ESMA's approach from the consultation paper was largely maintained.

ESMA also published a feedback statement, available [here](#), providing an overview of responses received from the consultation and clarifying aspects of the selection procedure for consolidated tape providers.

Following submission of the final report, the Commission has three months to consider the report and to decide whether to endorse the amendments to the RTS.

The final report can be accessed [here](#).

1.6 ESMA consults on draft RTS for establishment of an EU code of conduct for issuer-sponsored research under the MiFID II

On 18 December 2024, ESMA published a consultation paper containing draft regulatory technical standards (**RTS**) for the establishment of an EU code of conduct for issuer-sponsored research.

The draft RTS were developed in response to Article 1(2)(a) of the Listing Directive⁷ which amends Article 24 of MiFID II including empowering ESMA to develop the RTS to establish the EU code of conduct under the new Article 24(3c) of MiFID II.

⁷ Directive (EU) 2024/2811

The draft RTS obliges investment firms to request necessary information from the issuer to ensure that the research was produced in compliance with the EU code of conduct (as set out in the Annex to the draft RTS). To that end, investment firms must use the label “issuer-sponsored research” when producing or distributing the compliant research partly or fully paid by the issuer to clients.

This consultation is open to feedback until 18 March 2025.

ESMA will consider the feedback, publish a final report and expects to submit the final draft RTS to the European Commission by 5 December 2025.

The consultation paper can be found [here](#).

The press release can be found [here](#).

2 INVESTMENT FIRMS REGULATION AND INVESTMENT FIRMS DIRECTIVE

2.1 EBA publishes final report and draft ITS on reporting of information on certain K-factor requirements under the Investment Firms Regulation

On 3 December 2024, the European Banking Authority (**EBA**) published a final report containing draft implementing technical standards (**ITS**) on reporting and disclosure requirements for investment firms under the Investment Firms Regulation⁸ (**IFR**).

This reporting framework has been amended to comply with incoming changes under the new Capital Requirements Regulation⁹ (**CRR 3**) and the Capital Requirements Directive¹⁰ (**CRD VI**) on capital requirements, in particular with regard to the reporting of information on certain aspects of the K-factor requirements. The draft ITS were developed to ensure consistency with supervisory reporting requirements for credit institutions under the CRR framework and investment firms under the IFR/IFD framework as well as to introduce minor technical amendments. The EBA did not introduce a consultation period on account of the fact that the changes within the draft ITS are relatively minor.

The draft ITS came into effect on 1 January 2025.

The final report can be found [here](#).

3 EMIR

3.1 EMIR 3.0 enters into force

On 24 December 2024, the EMIR 3.0 Regulation entered into force, introducing revisions to the clearing requirements, risk mitigation requirements, reporting requirements, changes to the certain exemptions from the margining and clearing requirements and others (including the requirement for validation of initial margin models). While the majority of the EMIR 3.0 provisions apply from that date, certain requirements under the Regulation adhere to alternative implementation timelines.

The EMIR 3 Regulation can be found [here](#).

The EMIR 3.0 Directive also amends the CRD IV Directive¹¹ and the Investment Firms Directive¹² with the aim of encouraging institutions and investment firms to take the necessary steps to adapt their business models to ensure consistency with the new requirements for clearing under EMIR 3.0 and to enhance overall their risk management practices.

⁸ Regulation (EU) 2019/2033

⁹ Regulation (EU) 2024/1623 CRR 3 amending Regulation (EU) 575/2013 (CRR)

¹⁰ Directive (EU) 2024/1619

¹¹ Directive 2013/36/EU as amended

¹² Directive (EU) 2019/2034

The amendments under the EMIR 3.0 Directive will become applicable eighteen months later, as Member States need to transpose the amendments into national law.

The EMIR Directive is available [here](#).

4 CENTRAL BANK OF IRELAND

4.1 Central Bank publishes Dear CEO letter on marketing materials used for retail investors

On 10 October 2024, the Central Bank issued a Dear CEO letter on MiFID II marketing communication requirements to all Irish authorised MIFID investment firms, credit institutions and fund management companies providing MiFID II services to retail clients (**Dear CEO Letter**).

In the Dear CEO Letter, the Central Bank set down its key findings and expectations in respect of the common supervisory action it recently conducted on marketing and advertising requirements, as well as good practices observed by it during its review.

The Dear CEO Letter requires those firms providing MiFID II services to retail clients to:

- review their marketing and advertising practices against the relevant ESMA report and the findings, expectations and good practices set out in Schedule 1 to the letter;
- identify any necessary actions to be taken to address gaps; and
- have that action plan discussed and approved by the board of directors of the relevant management company by 31 January 2025. and have an action plan by 31 January 2025

A copy of the Dear CEO Letter is available [here](#).

A copy of the related ESMA report is available [here](#).

4.2 Investment Firm and Intermediary Newsletter - November 2024

In November 2024, the CBI published its Investment Firm and Intermediary Newsletter. The scope of the newsletter has been expanded to include MiFID Investment Firms for the first time.

The newsletter can be accessed [here](#).

4.3 Central Bank establishes new fitness and Probity Unit

In July 2024, the Central Bank published a report outlining the findings of an independent review of its fitness and probity regime which is intended to operate as a gatekeeping process to ensure that those who work in key positions within Irish regulated firms are fit and proper to do so. As explored in more detail in our briefing on the topic, the recommendations made focus on the clarity of supervision expectations, internal governance and the fairness, efficiency and transparency of the process.

On 19 December 2024, the Central Bank announced that it has established a new dedicated fitness and probity unit which will be in place from the start of 2025 and which will bring together fitness and probity activities that until now have been dispersed across the Central Bank.

The Central Bank's press release announcing the establishment of the dedicated unit is available [here](#).

5 SUSTAINABLE FINANCE

5.1 Platform on Sustainable Finance publishes briefing note on possible SFDR categorisation framework

In September 2023, the European Commission launched a public consultation on the SFDR¹³ in which it sought feedback from interested stakeholders on shortcomings of the existing framework and how the framework could be reformed to improve its useability and its ability to play its part in tackling greenwashing. As part of its consultation, the European Commission sought feedback on the possible introduction of a product classification regime.

On 17 December 2024, the Platform on Sustainable Finance (**PSF**), an advisory body to the European Commission, published a briefing note in which it set down its recommendations to the European Commission on how a categorisation system for sustainable finance products could be set up and calibrated.

In it, the PSF recommends the creation of a new product categorisation framework with the following sustainability strategies:

- **Sustainable:** those products which contribute through taxonomy-aligned investments or sustainable investments with no significant harmful activities or assets based on a more concise definition consistent with the EU taxonomy.
- **Transition:** those products with investments or portfolios supporting the transition to net zero and a sustainable economy.
- **ESG collection:** those products which exclude significantly harmful investments/activities and investing in assets with better environmental and/or social criteria or applying various sustainability features.

The PSF has proposed that each category should be subject to precise minimum criteria, clearly defined objectives and measurable key performance indicators. It has also recommended that all other products should be identified as unclassified products.

The European Commission is expected to publish a proposal to amend the SFDR in the second half of 2025. A copy of the PSF recommendations is available [here](#).

5.2 European Commission publishes draft Commission Notice on EU Taxonomy framework

On 29 November 2024, the European Commission published a draft commission notice on the interpretation and implementation of certain legal provisions of the EU Taxonomy Environmental Delegated Act¹⁴, the EU Taxonomy Climate Delegated Act¹⁵ and the EU Taxonomy Disclosures Delegated Act¹⁶ (Draft Commission Notice).

The Draft Commission Notice provides:

- Technical clarifications responding to frequently asked questions on the technical screening criteria set down in the EU Taxonomy Climate Delegated Act and the EU Taxonomy Environmental Delegated Act;
- Clarifications responding to frequently asked questions on the generic “do no significant harm” (DNSH) criteria; and
- Clarifications on the disclosure obligations laid down in the Taxonomy Disclosures Delegated Act.

It is intended to help stakeholders to comply with applicable regulatory requirements in a cost-effective way and to ensure that the reported information is comparable and useful in scaling up sustainable finance.

¹³ Regulation (EU) 2019/2088 as amended

¹⁴ Commission Delegated Regulation (EU) 2023/2486

¹⁵ Commission Delegated Regulation (EU) 2021/2139 as amended

¹⁶ Commission Delegated Regulation (EU) 2021/2178 as amended

The clarifications provided in the Draft Commission Notice may be of assistance to those investment firms who fall within the scope of Article 8 of the Taxonomy Regulation.

The Draft Commission Notice has been approved in principle by the European Commission and must now be formally adopted, after which it will be published in the Official Journal of the European Union.

A copy of the Draft Commission Notice is available [here](#).

5.3 ESA Report on principal adverse impact disclosures under the SFDR

On 30 October 2024, the European Supervisory Authorities (ESAs) published their annual report to the European Commission under Article 18 of the SFDR (Report).

The Report refers to PAI disclosures made by in-scope financial market participants by 30 June 2023 regarding the reference period from 1 January 2022 to 31 December 2022. It provides recommendations to the European Commission and the national competent authorities and Annex I to the Report also provides a summary of good and bad disclosure practices identified by the ESAs during their review of disclosures.

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

5.4 CSRD Round-Up

5.4.1 Publication of European Union (Corporate Sustainability Reporting) (No 2) Regulations 2024

On 9 July 2024, the Corporate Sustainability Reporting Directive¹⁷ was transposed into Irish law via the European Union (Corporate Sustainability Reporting) Regulations 2024 (Irish CSRD Regulations) and which amend the Companies Act 2014 and the Irish Transparency Regulations of 2007.

On 4 October 2024, the European Union (Corporate Sustainability Reporting) (No.2) Regulations 2024 were published (Irish CSRD Amending Regulations), making a number of technical clarifications to the Irish CSRD Regulations.

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

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

A copy of an FAQ on the CSRD published by the Department of Trade, Employment and Enterprise is available [here](#).

5.4.2 European Commission publishes FAQs on CSRD

On 7 August 2024, the European Commission published a draft Commission Notice containing FAQs on the implementation of the CSRD, providing guidance on the interpretation of certain provisions of the legislation, including for example the scope of the CSRD, application dates, the sustainability reporting assurance framework, value chain reporting and applicable exemptions.

The FAQ also provides a limited number of clarifications on the interpretation of the first set of the ESRS.

On 13 November 2024, a finalised version of this FAQs was published in the Official Journal.

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

¹⁷ Directive (EU) 2022/2464

5.4.3 EFRAG publishes new ESRS Q&A

In November 2024, EFRAG released an updated compilation of FAQ to respond to stakeholders' technical questions on the ESRS issued under the CSRD during the period from January 2024 to November 2024 (EFRAG November ESRS Q&A).

On 6 December 2024, EFRAG published a further 5 explanations to respond to stakeholders' technical questions on the ESRS relating to ESRS E1 (Climate Change), ESRS E4 (Biodiversity and ecosystems) and ESRS E4-5 (Impacts metrics related to biodiversity and ecosystems change) (EFRAG December ESRS Q&A).

The EFRAG November ESRS Q&A is available [here](#).

The EFRAG December ESRS Q&A is available [here](#).

5.5 ESG Ratings Regulation

On 12 December 2024, Regulation (EU) 2024/3005 on the transparency and integrity of environmental, social and governance (ESG) ratings activities (ESG Ratings Regulation) was published in the Official Journal of the European Union.

The ESG Ratings Regulation establishes a new regulatory framework governing the provision and distribution of ESG ratings within the EU.

It imposes obligations on EU ESG rating providers as well as certain non-EU ESG rating providers. It also amends the SFDR to require any financial market participant or financial advisor which issues and distribute an ESG rating in their marketing communications to comply with certain disclosure requirements. This includes providing a hyperlink to a website which provides information on the methodologies, models and key rating assumptions that are used in their ESG rating activities.

The new regulatory framework established under the ESG Ratings Regulation will apply from 2 July 2026.

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

A detailed overview of the ESG Ratings Regulation is provided in our briefing on the topic which is available [here](#).

6 DORA

6.1 DORA Technical Standards Update

The following technical standards and guidelines under DORA¹⁸ have been adopted by the European Commission¹⁹ or published in the Official Journal during the period 30 September 2024 to 31 December 2024:

- ITS on the Register of Information. The ITS were published in the Official Journal on 2 December 2024 and can be found [here](#).
- RTS on major ICT-related incidents and significant cyber threats reporting. The Regulation was adopted by the European Commission on 23 October 2024 and can be found [here](#).
- ITS on reporting details for major ICT -related incidents. The Regulation and its Annex, which was adopted by the European Commission on 23 October 2024, can both be found [here](#).

¹⁸ The Digital Operational Resilience Act (Regulation (EU) 2022/2554)

¹⁹ Delegated acts adopted by the European Commission are subject to a period of scrutiny by the European Parliament and the Council of the EU and will be published in the Official Journal of the EU and enter into force if the European Parliament or the Council of the EU do not object to them during the specified period, in accordance with Article 290(2) of the Treaty on the Functioning of the EU

- RTS on the harmonisation of conditions enabling the conduct of oversight activities in the EU,. The Regulation was adopted by the European Commission on 24 October 2024 and can be found [here](#) .
- The final version of the joint guidelines on the oversight co-operation and information exchange between the ESAs and competent authorities under DORA was published by the ESAs on 6 November 2024 and can be found [here](#).
- RTS to specify the criteria for determining the composition of the joint examination team. The RTS was adopted by the European Commission on 16 December 2024 and can be accessed [here](#).

6.2 ESAs publish Statement on the Application of DORA

On 4 December 2024, the ESAs issued a statement concerning the application of DORA ahead of the application of DORA on 17 January 2025 (**Statement**).

The ESAs highlight in the Statement that financial entities and third-party service providers must adopt a “robust, structured approach” to ensure that obligations under DORA are met. The ESAs also categorically state that DORA does not provide for a transitional period and therefore there is an onus upon financial entities to identify gaps between their internal setups and the requirements set out under DORA in a timely manner.

The ESAs also indicate that financial entities should: (i) prepare for the new reporting obligations under DORA, including ensuring that registers of ICT third-party providers’ contractual arrangements are available and correct early in 2025; and (ii) be equipped to classify and report their major ICT-related incidents from the outset. The Statement also highlights that competent authorities should be prepared to oversee compliance with the DORA requirements using a risk-based approach.

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

6.3 Joint Committee of ESAs report on dry run exercise relating to registers of information under DORA

On 17 December 2024, the ESAs published a report²⁰ following a dry run exercise relating to the registers of information of contractual arrangements with ICT third-party service providers, which financial entities are obliged to maintain and report under DORA (**Report**).

Originally launched in April 2024, the dry run exercise aimed to test the reporting processes implemented by the ESAs and to assist financial entities in ensuring their registers of information comply with the related ITS

The Report sets out the ESAs’ key findings which primarily related to the quality of data reported. While 6.5% of registers passed all data quality checks, 86% of register failed the data quality check related to missing mandatory information. Many registers also failed the check related to the use of unique identifiers for the financial entities and ICT third-party service providers.

The ESAs noted that key findings in the Report as well as all supplementary material should be carefully considered by all financial entities as they prepare for compliance with DORA.

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

6.4 DORA Communications and Publications Webpage

On 6 December 2024, the Central Bank of Ireland provided an update on the register of information and threat-led penetration testing (TLPT) on its DORA Communications and Publications webpage.

- Registers of Information: According to the most recent update, financial entities are obliged to submit their Registers of Information to the Central Bank by close of business on 4 April 2025. Information on the Registers should be correct

²⁰ ESA 2024 35

as at 31 March 2025. The Central Bank state that they will provide more information on how to submit Registers of Information, through the CBI Portal, in Q1 2025.

- **TLPT**: The Central Bank stated that it would engage with in-scope firms directly in the coming weeks in relation to TLPT. This will apply on a mandatory basis only to a limited number of firms which meet the criteria under DORA.

The DORA webpage can be found [here](#).

6.5 EBA Updates to Single Rulebook and Q&A

On 11 December 2024 the European Banking Authority (**EBA**) updated its Single Rulebook Q&A tool on DORA to include three additional Q&As as follows:

- Question in respect of the interpretation of the critical services affected for the purposes of the classification of major incidents (Article 18 of DORA and Article 6 of RTS on Classification of Major Incidents²¹);
- Question in respect of duplicate ICT incident reporting (Recital 51 of DORA); and
- Question in respect of exemption for non-EU ICT intra-group service providers (Article 31 of DORA).

The Single Rulebook Q&A is available [here](#).

7 DATA PROTECTION

7.1 EDPB press release of 8 October 2024

On 9 October 2024, the European Data Protection Board (**EDPB**) published an opinion on certain obligations following from the reliance of data controllers on processors and sub-processors (**Opinion**).

The Opinion provides as follows:

- controllers should have information concerning the identity of all processors and sub-processors readily available at all times in order to meet their obligations under Article 28 of the GDPR;
- controllers are also obliged to verify whether processors and sub-processors provide “sufficient guarantees” regardless of the risk to the rights and freedoms of data subject, although the extent of such verification may vary, notably on the basis of the risks associated with the processing;
- The ultimate decision and responsibility of engaging a specific sub-processor lies with the controller which should consider whether requesting a copy of such contracts and reviewing them is necessary to be able to show GDPR compliance;
- for transfers outside the EEA between two sub-processors, the processor must prepare the necessary documentation in its role as data exporter, such as the documentation relating to the ground of transfer used, the transfer impact assessment and possible supplementary measures. The controller should also assess the documentation and be able to present it to the relevant competent data protection authority if required.

A copy of the Opinion can be found [here](#).

²¹ Commission Delegated Regulation (EU) 2024/1772

7.2 EDPB publishes guidelines on processing of personal data based on legitimate interest

On 8 October 2024, the EDPB published guidelines on the processing of personal data based on legitimate interest for consultation (**Guidelines**). The Guidelines state that three cumulative conditions must be met to establish a basis of “legitimate interest” for the processing of personal data namely:

- The pursuit of a legitimate interest by the controller or by a third party;
- The necessity to process personal data for the purposes of pursuing the legitimate interest; and
- The interests or fundamental freedoms and rights of individuals do not take precedence over the legitimate interest(s) of the controller or of a third party (balancing exercise).

The Guidelines elaborate on how the above conditions should be assessed in practice and provide specific examples of cases such as fraud prevention, direct marketing and information security where a legal basis for processing personal data can be found.

The public consultation period regarding the Guidelines ended on 20 November 2024.

The responses to the consultation on the Guidelines are currently being considered by the EDPB and will be finalised in due course.

A copy of the Guidelines can be found [here](#)²².

²² The concept of legitimate interests under the GDPR was also recently considered by the ECJ in the case of Koninklijke Nederlandse Lawn Tennisbond v Autoriteit Persoonsgegevens. A copy of the judgement of the ECJ is available [here](#).

Key contacts

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 or your usual contact in Dillon Eustace.

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