



GLOSSARY

“Act in such a way that you treat humanity, whether in your own person or in the person of any other, never merely as a means to an end, but always at the same time as an end.”

Immanuel Kant, born 22nd April 1724, ‘paradigmatic philosopher of the European Enlightenment’ (Routledge Encyclopedia of Philosophy).

Strawman, p28

A strawman proposal is a problem-solving tool used in a group setting. A strawman is usually an initial draft proposal created with the goal of generating discussion, criticism and ideas to use as feedback for subsequent drafts with the goal to eventually end up with a robust solution. The development of the technique is often attributed to the global consultancy McKinsey.

It is related to but not equivalent to the use of the term ‘straw man fallacy’ in philosophy, which involves the deliberate distortion of another person’s argument, perhaps by simplifying it or exaggerating it.

The Department of Finance recently used the concept in its feedback statement on the introduction of a Participation

Exemption for Foreign Dividends. BDO’s Angela Fleming writing in this month’s *Irish Tax Monitor* discusses the proposal. The Department of Social Protection also used the terminology in its 2018 public consultation on the establishment of Automatic Enrolment Retirement Savings System. Ireland’s auto-enrolment is planned to begin in January 2025.

RTS, p5

Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS) are types of regulatory instrument used in the European Union to give detailed technical specifications for the implementation of certain aspects of legislation. The European Parliament and Council can delegate power to the European Commission to adopt RTS and ITS. The RTS/ITS is developed by one of the European Supervisory Authorities (ESMA, EBA, EIOPA) and the draft RTS/ITS is submitted to the Commission for endorsement or amendment. For instance in the case of the new ELTIF 2.0 legislation (see page 5) the draft RTS related to the updated framework submitted by ESMA to the Commission in December 2023 has been

amended and sent back to ESMA. ESMA will in turn resubmit draft RTS to the Commission for approval, process which will continue until agreement is found. On the reasons behind the Commission’s decision to send back amendments on the ELTIF 2.0 draft RTS Hélène Bussi eres, Acting Head of the Asset Management Unit at the Commission, said the amended draft RTS aims to maintain the flexibility of the new ELTIF 2.0.

Under EU law RTS are classed as ‘delegated acts, technical, prepared by a European Supervisory Authority. It should further develop, specify and determine the conditions for consistent harmonisation of the rules included in the basic legislative act.’ As such RTS cannot imply strategic decisions or policy choices and the scope and content of an RTS is limited by the legislative act(s) on which they are based, helping to prevent regulatory overreach from the ESAs.

Trash ratio

The ‘trash ratio’ refers to a rule for UCITS funds that prevents such funds from investing more than 10% of their assets in illiquid assets. Technically, the particular article of the UCITS Directive in question permits UCITS

to invest up to 10% of its net assets in transferable securities and money market instruments, other than eligible assets as defined under UCITS regulations. The interpretation of what assets could be included in this ‘trash ratio’ by certain regulators, including the EU’s two largest funds centres, Ireland and Luxembourg, meant that the 10% trash ratio could be used for a range of investments including unregulated investment funds, including open-ended hedge funds, provided the investment complies with the eligibility criteria for UCITS (such as liquidity requirements, potential losses, NAV availability, consistent with the investment objective/policy of the UCITS). However, an opinion from ESMA issued in November 2012, significantly reduced the scope of assets eligible in the ‘trash ratio’ with the regulator deciding UCITS may only invest in other UCITS, or alternatively, funds that are subject to equivalent supervision as UCITS and which provide an equivalent level of investor protection as UCITS.

Photographs: (L-R): ESMA headquarters building, Paris; Immanuel Kant (R), b. 22 April 1724, d. 12 February 1804.