

# Unregulated Activities and Use of the Regulated Statement

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“**To be regulated or unregulated: what does it mean for firms and consumers?”**

**The boundary problem**

The question of how far financial regulation should reach is no longer theoretical in Ireland. The Central Bank of Ireland (CBI), in its *Dear CEO Letter on Unregulated Activities* (25 June 2020), instructed firms that the “regulatory status must be clearly and effectively communicated.” The same message runs through the *Consumer Protection Code 2025* and its *General Guidance*, both published on 24 March 2025 and effective from 24 March 2026.

The CBI now requires firms that provide both regulated and unregulated services to keep those activities distinct in how they are marketed, described, and disclosed. ESMA, in its *Statement on Investment Firms’ Unregulated Activities* (25 May 2023), warned that consumers “may mistakenly assume that all products offered by a regulated firm benefit from the same level of regulatory protection.”

This “halo effect” is no longer an abstract risk. It is a measurable problem that has already cost Irish consumers real money.

**Why the boundary matters**

What does this mean in practice? A firm or product regulated by a supervisory authority provides defined consumer protections.

Those protections may include:

- In the event of a complaint, the matter may be escalated through an Alternative Dispute Resolution (ADR) process. This is free of charge to the consumer.
- Clients have access to the Financial Services and Pensions Ombudsman (FSPO) where a complaint cannot be resolved by the firm.
- A firm’s regulated status creates a ‘halo effect’ that can give comfort to consumers. However, regulators state that this status must not be used as a promotional tool.

Regulation carries specific protections. Clients of regulated products may, depending on product type, access the *Financial Services and Pensions Ombudsman (FSPO)* and the *Investor Compensation Scheme* or *Deposit Guarantee Scheme*. Those remedies are statutory, but they are not universal. The coverage depends on product classification and the nature of the client relationship.

Firms that operate in both spaces, regulated and unregulated, often rely on the credibility of their licence to build trust. The CBI and ESMA now regard that as a material conduct risk. Misuse of regulated status in promoting unregulated products is a breach of supervisory expectations and, in some cases, the *Consumer Protection Code 2025*.

**Recent lessons**

The failures of Solar 21, Blackbee and Arena Capital

## The Importance of Financial Regulation



Promoting  
Stability



Protecting  
Consumers



Preventing  
systemic risks

Source: [www.jaroeducation.com/blog/what-is-financial-regulation](http://www.jaroeducation.com/blog/what-is-financial-regulation)

and their respective loan note investments, which are now at various stages of Liquidation or Court Ordered arrangements.

Illustrates the consequences when unregulated products are promoted by financial advisors under a regulated brand. In these cases, the consumer may not realise a return on their capital or indeed lose all the money they invested and subsequently discover that the product was not subject to the CBI rules, leaving them without access to the FSPO or any statutory compensation scheme.

The CBI's enforcement record shows that firms cannot rely on good intentions. Enforcement under the *Administrative Sanctions Procedure* has led to multimillion-euro fines for failures in governance and disclosure. These outcomes confirm the regulator's stance. Consumer misunderstanding caused by blurred regulatory boundaries is a supervisory failure.

### The new regulatory expectations

Under the *Consumer Protection Code 2025* and *General Guidance* (24 March 2025):

- Firms must not use their regulated status as a marketing tool for unregulated products.
- The regulated statement ("regulated by the Central Bank of Ireland") must appear only with regulated services.
- National Competent Authorities (NCAs) now require firms to disclose unregulated status clearly.
- They have placed guard rails for firms to follow as good practice.
- The Consumer Protection Code defines 'unregulated activities' as the provision of services that do not require authorisation by the Central Bank of Ireland.

- When offering unregulated activities, firms must include the following disclosure in all communications: "Warning: The provision of this service does not require licensing, registration or authorisation by the Central Bank of Ireland, and as a result is not covered by Central Bank of Ireland rules designed to protect consumers or by a statutory compensation scheme."
- Websites and brochures for regulated and unregulated services must be separate and visually distinct, as described in the CBI's *Guidance on Securing Customers' Interests* (2025). This clearly shows consumers whether a product is regulated or unregulated.
- Firms must complete implementation by 24 March 2026.

### Testing whether this goes far enough

Some commentators, including legal specialists at *A&L Goodbody* and *Matheson*, question whether the CBI has gone far enough. They argue that the CBI should not only define unregulated activities but also issue a definitive annex listing all regulated services, mirroring *Annex I of MiFID II*. That approach, they argue, would eliminate ambiguity and give both firms and consumers certainty.

The counterargument, advanced by *KPMG* and *Mason Hayes & Curran*, is that rigid lists soon become obsolete. Financial products evolve faster than legislation. If the CBI locks definitions into regulation, firms risk delay in innovation and uncertainty whenever new structures emerge.

A hybrid solution would serve Ireland better. The CBI could publish a **dynamic annex**, a list of regulated activities subject to scheduled annual review and stakeholder consultation. That approach would combine legal clarity with flexibility and align with ESMA's move toward proportionate, risk-based supervision.

## Where firms face the greatest risk

Experience shows that governance, not just disclosure, determines outcomes. Firms often assume their Professional Indemnity Insurance (PII) automatically covers advice on unregulated products. That assumption is unsafe. PII policies often exclude unregulated activities and require careful review. A firm facing investor claims on an unregulated product may find itself funding compensation from its own capital.

Boards should therefore:

1. Review all PII policy wording for unregulated activity exclusions.
2. Record board discussions on risk appetite for unregulated products.
3. Require compliance to maintain a product mapping register distinguishing regulated and unregulated services.
4. Verify website and marketing separation before the 2026 deadline.
5. Audit client files for disclosure evidence, including use of the mandatory warning text.

## Regulatory philosophy: the real question

The debate over whether to regulate or not regulate misses the deeper issue. The objective is not more or less regulation. It is better regulation. Both extremes carry cost. Overregulation restricts market entry. Underregulation transfers risk to consumers and erodes trust.

Ireland's regulatory future depends on moving beyond binary thinking. The country needs a smart framework that applies supervision where risk is greatest and leaves room for innovation where consumer exposure is low.

## The synthesis: smart regulation wins

Smart regulation targets risk rather than activity labels. It builds proportionate compliance requirements that reflect firm size and systemic impact. It protects consumers without suffocating innovation.

Risk-based supervision directs resources to high-impact failures. Technology and automated monitoring systems reduce compliance costs and improve oversight quality. These advances, already used by ESMA and the CBI, create better outcomes for both consumers and firms.

Consumer protection remains vital, especially for vulnerable groups. Market failures still require firm intervention. But one-size-fits-all rules waste resources and block useful experimentation.

Firms should embed a culture of securing customers' interests through governance, controls,

and oversight, regardless of regulatory status.

Implementation framework for smart regulation

## Phase One: Comprehensive Assessment (6 months)

Conduct detailed impact analysis across financial sectors. Consult stakeholders, including consumer groups and industry bodies. Benchmark EU and UK practices for best models. Evaluate technology opportunities for supervision and regtech adoption.

## Phase Two: Framework Design (6 months)

Develop a risk-based regulatory model with tiered oversight. Define proportionate compliance standards for smaller institutions. Establish an innovation policy framework encouraging sandbox testing. Optimise consumer protection for vulnerable customers.

## Phase Three: Gradual Implementation (12 months)

Pilot new supervisory approaches. Install performance and outcome monitoring systems. Build continuous feedback mechanisms between regulators and firms. Review the framework annually for effectiveness and adaptability.

## The path forward demands wisdom

Regulatory excellence is now a competitive advantage, not a cost. Firms that invest in compliance systems and transparent governance build consumer trust and resilience. Those that resist adaptation face enforcement risk and reputational decline.

Ireland's challenge is not to choose between regulation and deregulation, but to design oversight that learns and evolves. Smart regulation, rooted in risk awareness, proportionality, and technological capability, is the path forward.

Balance wins.

## Key sources referenced

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