

Insurance Quarterly Legal and Regulatory Update

Period covered:
1 July 2017 – 30 September 2017

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▣ INSURANCE QUARTERLY LEGAL AND REGULATORY UPDATE

Solvency II

(i) **EIOPA issues consultation paper on the review of the Solvency II Delegated Regulation**

On 4 July 2017, the European Insurance and Occupational Pensions Authority (“**EIOPA**”) published a consultation paper on EIOPA’s first set of advice to the European Commission on specific items contained in EU Regulation (EU) 2015/35 (the “**Solvency II Delegated Regulation**”) (the “**Consultation**”).

The Consultation is part of EIOPA’s review of the Solvency II Delegated Regulation and, in particular, EIOPA’s review of the Solvency Capital Requirement (“**SCR**”) standard formula. This review started in 2016 with the first discussion paper issued in December 2016.

The main goals of the review are:

- ▣ To ensure a proportionate and technically consistent supervisory regime for (re)insurance undertakings; and
- ▣ To look for possible simplifications in the SCR standard formula and to ensure the proportionate application of the requirements.

The Consultation includes EIOPA’s advice on the matters including simplified calculations, reducing reliance on external credit ratings in the standard formula, treatment of guarantees, exposure guaranteed by a third party and exposures to regional governments and local authorities, risk-mitigation techniques, the look-through approach on investment related vehicles, undertaking specific parameters, and the loss-absorbing capacity of deferred taxes.

EIOPA intends to finalise its advice regarding the items mentioned above in October 2017 and then submit this final advice to the European Commission.

The deadline for responses to the Consultation was 31 August 2017.

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

(ii) **EIOPA submits amended ITS on reporting and disclosure under Solvency II and publishes final taxonomy version 2.2.0.**

On 17 July 2017, EIOPA submitted draft amendments of the following implementing technical standards (“**ITS**”) under EU Directive 2009/138/EC (the “**Solvency II Directive**”) to the European Commission for endorsement:

- ▣ ITS on the templates for the submission of information to the supervisory authorities (“**ITS on reporting**”); and
- ▣ ITS with regard to the procedures, formats and templates of the solvency and financial condition report (“**SFCR**”) (“**ITS on disclosure**”).

The publication of amended versions of the above ITS follows EIOPA's April 2017 call for comments on the final draft of both ITS. The amendments also concern the Guidelines on Reporting for Financial Stability Purposes and the Guidelines on the Supervision of Branches of Third-Country Insurance Undertakings.

EIOPA expects that both ITS will be applicable at the end of 2017.

In order to align the legal basis and the taxonomy release, on 17 July 2017, EIOPA also released the final Data Point Model and Taxonomy version 2.2.0, including all relevant documentation and information on amendments and feedback received to the 2.2.0 Public Working Draft.

A copy of the final ITS on reporting is available [here](#).

A copy of the final ITS on disclosure is available [here](#).

Information on the Data Point Model and Taxonomy release can be found [here](#).

(iii) ESAs publish consultation paper on revising the ITS on the allocation of credit assessments of ECAIs to an objective scale of credit quality steps under Solvency II

On 18 July 2017, the European Supervisory Authorities (“**ESAs**”) published a consultation paper relating to proposed revised amendments to Commission Implementing Regulation (EU) 2016/1800 of 11 October 2016 laying down implementing technical standards with regard to the allocation of credit assessments of external credit assessment institutions (“**ECAIs**”) to an objective scale of credit quality steps in accordance with the Solvency II Directive (the “**Commission Implementing Regulation**”).

Under the Solvency II Delegated Regulation, (re)insurers may use an external credit assessment for the calculation of the SCR in accordance with the standard formula only where it has been issued by an ECAI or endorsed by an ECAI in accordance with the Credit Rating Agencies (“**CRAs**”) Regulation (Regulation (EC) No. 1060/2009). The annex to the Commission Implementing Regulation set out the allocation tables for 26 ECAIs.

Since the Commission Implementing Regulation entered into force, ESMA has withdrawn the registration of one CRA and five additional CRAs have been recognised. Therefore, the Commission Implementing Regulation will need to be updated to reflect allocations for the newly established ECAIs and to remove the reference to the de-registered ECAI.

The Consultation Paper sets out the proposed revised draft ITS and the ESAs requested feedback on these draft ITS before 18 September 2017.

The Consultation Paper can be accessed [here](#).

(iv) Solvency II Commission Implementing Regulation (EU) 2017/1421 on technical information for calculation of technical provisions and basic own funds published in the Official Journal of the EU

On 5 August 2017, Commission Implementing Regulation (EU) 2017/1421 of 2 August 2017 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 30 June 2017 until 29 September 2017 in accordance with the Solvency II Directive (the “**Commission Implementing Regulation**”) was published in the Official Journal of the EU.

The Commission Implementing Regulation provides that (re)insurance companies must use the technical information on relevant risk-free interest rate term structures, fundamental spreads for the calculation of the matching adjustment and volatility adjustments referred to in Article 1(2) of the Commission Implementing Regulation when calculating technical provisions and basic own funds for reporting with reference dates from 30 June 2017 until 29 September 2017.

In order to ensure uniform conditions for the calculation of technical provisions and basic own funds by (re)insurance undertakings, the Commission Implementing Regulation states in the recitals that this technical information should be laid down for every reference date.

The Commission Implementing Regulation entered into force on 6 August 2017, applies from 30 June 2017 and is binding in its entirety and directly applicable in all Member States.

A copy of the Commission Implementing Regulation is available [here](#).

(v) Irish Solvency II Amending Regulations published

On 25 August 2017, the European Union (Insurance and Reinsurance) (Amendment) Regulations 2017 (S.I. no. 384 of 2017) (the “**Irish Solvency II Amending Regulations**”) were published.

The Irish Solvency II Amending Regulations make certain amendments to the European Union (Insurance and Re-insurance) Regulations 2015 (S.I no 485 of 2015) (the “**Solvency II Regulations**”) in order to more accurately reflect the text of the Solvency II Directive (as amended).

More specifically, the Irish Solvency II Amending Regulations provide for changes in relation to the following areas:

- ☐ Exemption for Third country reinsurance undertakings;
- ☐ Transfers of reinsurance portfolios;
- ☐ Authorisation and conditions of third country branches;
- ☐ Fit and proper requirements for insurance holding companies and mixed financial holding companies; and
- ☐ Disapplication of Sections 14 and 15 of the Insurance Act 1989 to Solvency II undertakings not in run-off.

A copy of the Irish Solvency II Amending Regulations can be found [here](#).

(vi) Commission Delegated Regulation amending Solvency II Delegated Regulation on infrastructure corporates published in Official Journal of the EU

On 14 September 2017, the Commission Delegated Regulation ((EU) 2017/1542) of 8 June 2017 amending the Solvency II Delegated Regulation (EU) 2015/35 concerning the calculation of regulatory capital requirements for certain categories of assets held by insurance and reinsurance undertakings (infrastructure corporates) was published in the Official Journal of the EU (the “**Amending Delegated Regulation**”).

The Amending Delegated Regulation is based on advice received from EIOPA in June 2016 and proposes amendments which reduce the capital charges attached to investments by insurance companies in infrastructure corporates where certain criteria are met, with the overall aim of promoting infrastructure investment in the EU.

The Amending Delegated Regulation entered into force on 15 September 2017.

The Amending Delegated Regulation can be accessed [here](#).

(vii) EIOPA publishes second set of Solvency II statistics on EU insurance sector

On 18 September 2017, EIOPA published its second set of comprehensive statistical information on the EU insurance sector based on Solvency II reporting (the “**EIOPA Solvency II Statistics**”).

The EIOPA Solvency II Statistics contain country breakdowns and distributions of key variables based on reporting from solo insurance and reinsurance undertakings for quarter 4 of 2016. The Solvency II Statistics also includes a set of indicators based on financial stability reporting for the largest European insurance groups and undertakings on an aggregated level.

The EIOPA Solvency II Statistics can be accessed [here](#).

(viii) European Commission publishes proposal for a Directive to include amendments to the Solvency II Directive

On 20 September, 2017, the European Commission published a proposal for a Directive of the European Parliament and of the Council amending Directive 2014/65/EU on Markets in Financial Instruments and the Solvency II Directive (the “**Proposal**”).

The Proposal forms part of a package of measures with the purpose of enhancing the supervision of EU financial markets by improving the operation of the system of ESAs and accelerating and completing the Capital Markets Union.

In relation to Solvency II, the Proposal concerns the role of EIOPA in the approval processes for internal models. Under Solvency II it is possible in specific circumstances for (re)insurance undertakings and groups to use internal models for the calculation of the SCR and these internal models are subject to supervisory approval. Despite the valuable work carried out by EIOPA on supervisory convergence in respect of internal models, major inconsistencies remain with regard to the requirements of competent authorities for internal models and difficulties exist in reaching joint agreements on group internal models within colleges and supervisors which in turn creates an uneven playing field amongst market participants.

The Proposal therefore promotes supervisory convergence by enhancing EIOPA’s role with regard to internal models through provisions on cooperation and information sharing, coupled with powers for EIOPA to adopt Opinions in this area and to contribute on its own initiative to the settlement of disputes between supervisory authorities, including through binding mediation.

In addition to the draft amendments, the Proposal sets out the legal basis for the Proposal and the results of ex-post evaluations, stakeholder consultations and impact assessments.

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

(ix) EIOPA publishes monthly symmetric adjustment of the equity capital charge

On a monthly basis, EIOPA updates information on the symmetric adjustment of the equity capital charge. The symmetric adjustment to the equity capital charge is included in the calculation of the equity risk sub-module in accordance with the Solvency Capital Requirement (the “**SCR**”) standard formula to cover the risk arising from changes in the level of equity prices. This adjustment is regulated mainly in Article 106 of the Solvency II Directive, Article 172 of the Solvency II Delegated Regulation as well as in the Implementing Technical Standards on the equity index for the symmetric adjustment of the equity capital charge (Commission Implementing Regulation 2015/2016/EU).

EIOPA published the technical information on the symmetric adjustment of the equity capital charge for Solvency II as follows:

- ▣ With reference to the end of June 2017 on 6 July 2017;
- ▣ With reference to the end of July 2017 on 4 August 2017; and
- ▣ With reference to the end of August 2017 on 6 September 2017.

The monthly symmetric adjustment of the equity capital charge can be accessed [here](#).

(x) EIOPA publishes Solvency II relevant risk-free interest rate term structures

EIOPA intends to publish the technical information in relation to risk free interest rate (“RFR”) term structures on a monthly basis to ensure consistent calculation of technical provisions across the EU.

In Quarter 2, EIOPA published the RFR as follows:

- ▣ With reference to the end of June 2017 on 6 July 2017;
- ▣ With reference to the end of July 2017 on 4 August 2017; and
- ▣ With reference to the end of August 2017 on 6 September 2017

Undertakings should note that EIOPA has stated on their website that, in certain circumstances, it may be necessary for EIOPA to amend and/or republish the technical information after it has been published.

EIOPA’s background material and the monthly technical information on the RFR term structures can be accessed [here](#).

(xi) EIOPA publishes updated Solvency II Questions and Answers

During Quarter 3, EIOPA published updated Solvency II Q&As on the following:

- ▣ (EU) No 2015-2450 with regard to the templates for the submission of information to the supervisory authorities (Last updated 15 September 2017);
- ▣ (EU) No 2015-2452 with regard to the procedure, format and templates of the solvency and financial condition report (Last updated 5 September 2017);
- ▣ Answers to questions on the Solvency II Delegated Regulation supplementing the Solvency II Directive (Last updated 18 August 2017); and

The EIOPA Solvency II Q&As can be accessed [here](#).

The Answers to Questions on the Solvency II Delegated Regulation can be accessed [here](#).

European Insurance and Occupational Pension Authority (“EIOPA”)

(i) **EIOPA publishes opinion on the harmonisation of recovery and resolution framework for (re)insurers across Member States**

On 5 July 2017, EIOPA published an opinion on the harmonisation of recovery and resolution of insurers and reinsurers (the “**Opinion**”). The Opinion was addressed to the European Commission, the European Parliament and the Council of the EU.

In the Opinion, EIOPA calls for the establishment of a minimum harmonised and comprehensive framework in the area of recovery and resolution framework for all (re)insurers within the scope of Solvency II as EIOPA believes that this would contribute to achieving policyholder protection, as well as maintaining financial stability in the EU. In the Opinion, EIOPA proposes four building blocks for a harmonised framework. These include:

- ▣ Harmonised requirements upon insurers for preparation and planning (to reduce the probability of insurers failing by developing pre-emptive recovery plans and to reduce the impact of potential failures by developing pre-emptive resolution plans);
- ▣ Early intervention powers for national supervisory authorities;
- ▣ Harmonisation on the objectives for resolution, the conditions for entry into resolution and the resolution powers available to resolution authorities; and
- ▣ Cross-border co-operation and co-ordination on resolutions between national authorities in different jurisdictions.

In the Opinion, EIOPA stated that proportionality should be a fundamental guiding principle of a harmonised framework. EIOPA intends to monitor the progress made in the field of recovery and resolutions in Member States in the coming years and will continue with its own work in this field.

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

(ii) **EIOPA publishes summary from InsurTech roundtable**

On 5 July 2017, EIOPA published its summary from the InsurTech Roundtable: “How technology and data are reshaping the insurance landscape,” which was held on 28 April 2017 (the “**InsurTech Summary**”)

Given the fact that InsurTech / digitalisation is of strategic importance for the insurance sector, EIOPA organised a roundtable to discuss with stakeholders the benefits and risks of digitalisation for the industry and consumers as well as potential obstacles to effective innovation. At the event, a broad range of stakeholders including representatives from supervisory authorities, consumers, incumbents, start-ups, consultancy firms and IT experts

exchanged their different experiences and points of views on the impact of digitalisation in the insurance sector.

The InsurTech Summary sets out a summary of the main issues discussed during the roundtable which deal with the following:

- ▣ The impact of digital technologies in the insurance value chain;
- ▣ The advent of new players: InsurTech firms;
- ▣ Big Data and the Internet of Things;
- ▣ Blockchain and smart contracts;
- ▣ Peer-to-peer insurance;
- ▣ Artificial Intelligence; and
- ▣ How can regulatory authorities encourage financial innovation in the insurance sector?

EIOPA advises that the InsurTech Summary is mainly based on the views and opinions expressed by the different stakeholders on the different topics and therefore it does not necessarily represent the position of EIOPA.

EIOPA is organising a second InsurTech Roundtable on 9 November 2017, which will explore the implications of using big data for pricing and its impact on underwriting as well as risk management.

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

(iii) EIOPA publishes opinion on supervisory convergence in light of UK withdrawing from EU

On 11 July 2017, EIOPA published an opinion on supervisory convergence in light of the UK withdrawing from the EU.

The opinion is addressed to the national competent authorities of the EU Member States and applies to the authorisation processes and on-going supervision of undertakings falling under the Solvency II framework.

In the opinion, EIOPA assumes that the UK will become a third-country for the purposes of applying the Solvency II framework when it leaves the EU and, consequently, that UK-based insurers will lose their right to conduct business across the EU under the existing EU passport provided by the Solvency II Directive. Consequently, the opinion recognises that such UK-based firms may seek to relocate business to another EU Member State.

The opinion provided guidance in the following areas:

- ▣ Authorisation and approvals;
- ▣ Governance and risk management;
- ▣ Outsourcing of critical and important activities;
- ▣ On-going supervision; and
- ▣ Monitoring by EIOPA.

EIOPA advises that this opinion is notwithstanding any specific arrangements that may be reached between the UK and the EU or, where applicable, existing national rules relating to market access or the effect of any equivalent decision.

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

(iv) EIOPA work programme for 2018

On 29 September, 2017, EIOPA published its Single Programming Document 2017 to 2019 (the “SPD”) which contains EIOPA’s work programme and highlights and specifies the activities and tasks of EIOPA for the coming year within the framework of a multi-annual work programme 2017 to 2019.

The SPD consists of two parts – the first part sets up the direction of the development of the EIOPA and the relevant business strategic objectives and actions for the period 2017 to 2019. The strategic objectives of EIOPA include:

- ▣ To strengthen the protection of consumers;
- ▣ To improve the functioning of the EU internal market in the field of pensions and insurance;
- ▣ To strengthen the financial stability of the insurance and occupational pensions sectors; and
- ▣ To be a responsible, competent and professional organisation.

The second part outlines the tasks that EIOPA is mandated to and will perform in the course of the specific year in which the Single Programming Document applies (2017, 2018 and then 2019).

The SPD can be found [here](#).

European Commission

(i) **European Commission launches Public Consultation on REFIT review of the Motor Insurance Directive**

On 28 July 2017, the European Commission launched a public consultation on the REFIT review of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (Directive 2009/103/EC) (the “**Motor Insurance Directive**”).

The Motor Insurance Directive ensures protection for the victims of motor accidents throughout the EU. Among other matters, the Motor Insurance Directive ensures that if a vehicle is insured for third party liability in one Member State, this cover must apply in the territory of all Member States without the need for any further administrative formalities, thus assuring the protection of victims across the EU.

The purpose of the consultation is to gather input on all elements of the Motor Insurance Directive and it covers both the evaluation and the impact assessment.

The European Commission invites all stakeholders to respond to this consultation by 20 October 2017.

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

(ii) **EU and US sign a bilateral agreement on insurance and reinsurance prudential measures**

On 22 September 2017, the EU and the US signed a bilateral agreement on prudential measures regarding insurance and reinsurance (the “**Agreement**”). The Agreement addressed three areas of prudential insurance oversight:

- ▣ **Reinsurance:** The Agreement will lead to the elimination of collateral and local presence requirements for EU and US reinsurers operating in the other’s market.
- ▣ **Group supervision:** Under the Agreement, EU and US insurers operating in the other’s market will only be subject to worldwide prudential insurance group oversight by supervisory authorities in their home jurisdiction.
- ▣ **Exchange of insurance information between supervisory authorities:** The Agreement encourages insurance supervisory authorities in the US and the EU to continue to exchange information on (re)insurers that operate in the two markets and the agreement includes model information sharing memorandum of understanding (“**MoU**”) provisions.

The EU and US will meet regularly as a Joint Committee to ensure proper implementation of the Agreement.

Following the consent of the European Parliament and the Council of the EU, the Agreement will fully apply for both sides for 60 months after signature.

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

The European Commission also published a factsheet on the Agreement which can be found [here](#).

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

International Association of Insurance Supervisors (“IAIS”)

(i) IAIS update on 10th Annual IAIS Global Seminar

On 5 July 2017, IAIS published a press release on the 10th Annual IAIS Global Seminar that was held on 29 – 30 June 2017 (the “**Press Release**”). The Press Release provided an update on the global event noting that it showcased key IAIS initiatives in robust and engaging panels including topics such as ComFrame (ComFrame is a common framework for the supervision of internationally active insurance groups), the Insurance Capital Standard (“**ICS**”), assessment of systemic risk, implementation of international standards and market development, the insurance contracts standard (IFRS 17) recently issued by the International Accounting Standards Board, conduct of business in insurance distribution, digitalisation in the insurance sector, and insurer financial reporting of climate change risk. Among the highlights at the global seminar:

- ▣ IAIS announced that it has held its first stakeholder session on the development of an activities-based approach to systemic risk assessment. IAIS also reiterated its plans for a consultation on the initial findings, which is expected later in 2017. It will be followed by a consultation on systemic risk assessment by the end of 2018.
- ▣ IAIS provided a high-level summary of comments received during its recent consultation on certain ComFrame-related material and announced plans for a public consultation of ComFrame in its entirety, including ICS Version 2.0 in mid-2018.

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

(ii) IAIS releases ICS version 1.0 for extended field testing

On 21 July 2017, IAIS announced the release of the ICS Version 1.0 for extended field testing and published a related report titled Risk-based Global Insurance Capital Standard Version 1.0 for Extended Field Testing (the “**Report**”).

The Report describes the background and rationale for the design and calibration of the ICS components and, where relevant, the various options being considered.

More specifically, the Report covers important aspects of the ICS construction focusing on the development of ICS Version 1.0 for extended field testing, namely:

- ▣ ICS valuation covering the two valuation approaches, MAV and GAAP Plus;
- ▣ ICS capital resources;
- ▣ ICS capital requirement based on the standard method; and
- ▣ Scope of application: perimeter of the calculation of the ICS.

In a related press release, the IAIS explains that, although the report is not a formal consultation document, feedback from the public is welcome, and will be considered in the development of ICS version 2.0.

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

(iii) Insurance Europe issues response to the IAIS consultation on revisions to ICP13

On 1 August 2017, Insurance Europe published its response to the IAIS Consultation on Revisions to Insurance Core Principle 13 regarding Reinsurance and Other Forms of Risk Transfer (“**ICP13**”).

While Insurance Europe said that the proposed changes to ICP 13 were broadly positive, it asked for several clarifications and urged the IAIS to refrain from being over prescriptive in certain provisions.

Overall, Insurance Europe proposes that the principal of proportionality is reflected more prominently and asks for clarifications in certain places. Amongst other comments, Insurance Europe supported the added language on geographical diversification but provided suggested additions to the text. Insurance Europe also commented that it does not consider it adequate to put “structured reinsurance” at the same level with “finite reinsurance” and proposes to update ICP 13.3.7.

A copy of Insurance Europe’s response can be found [here](#).

(iv) IAIS launches public consultation on the revision of ICP 24

On 1 August 2017, the IAIS launched a public consultation on the Revision of Insurance Core Principle 24 on relates to macroprudential surveillance and insurance supervision (“**ICP 24**”).

The consultation followed the thematic approach adopted by the IAIS in September 2013 which is aimed at ensuring a more efficient process of developing advisory materials with the management and development of supervisor materials by theme across the three tiers of standard setting: ICPs, Com-frame and GS II Policy Measures.

The IAIS held public background call on 14 September 2017 to discuss the draft Revised ICP. The deadline for feedback on this consultation document was 1 October 2017.

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

(v) Insurance Europe issues responses to IAIS consultations on ICP 1, ICP 2, ICP 18 and ICP 19

In September, 2017, Insurance Europe responded to IAIS's consultation on revisions to the following Insurance Core Principles ("ICPs"):

- ▣ ICP 1 on objectives, powers and responsibilities of the supervisor;
- ▣ ICP 2 on the supervisor;
- ▣ ICP 18 on intermediaries; and
- ▣ ICP 19 on market conduct.

Among other matters:

- ▣ In respect of ICP 1, Insurance Europe made a number of comments including calling for further clarifications to be made to the supervisors' responsibilities and objectives and commented that ICP 1 could be further enhanced to set out good regulatory practice that the supervisors should consider in fulfilling their mandate.
- ▣ In respect of ICP 2, Insurance Europe commented that the information received by authorities, bodies and persons should be covered by the obligation of professional secrecy as opposed to confidentiality and the principle of proportionality should be explicitly reflected in a number of the revised standards and guidance. While Insurance Europe agreed with the principle of operational independence, it recommends amending ICP 2 to better reflect the need for proportionality in the exercise of supervisory objectives and provides suggested amendments. Insurance Europe also noted that it does not support the deletion of the reference to confidentiality in ICP 2 and asks that this is reconsidered.
- ▣ In respect of ICP 18 on intermediaries, Insurance Europe made a number of comments, including expressing concerns on the suggestion to overlook the legal requirements of the individual jurisdiction and apply a different standard as it believes that this undermines the supervisors' objectives in setting their jurisdictional requirements,

potentially resulting in a loss of choice for policyholders and a negative impact on insurance penetration.

- ▣ In respect of ICP 19 on market conduct, Insurance Europe suggested that clear definitions of the words “customer” and “consumer” would be helpful to understand the scope of each provision of ICP 19. Insurance Europe also highlighted the need to make the principle of proportionality more evident, especially in terms of the requirements for senior management to evaluate implementation and monitoring procedures.

A copy of Insurance Europe’s response to ICP 1 and ICP 2 can be found [here](#).

A copy of Insurance Europe’s response to ICP 18 can be found [here](#).

A copy of Insurance Europe’s response to ICP 19 can be found [here](#).

Insurance Europe

(i) **Insurance Europe comments on EIOPA consultation on 2.2.0 Public Working Draft release of the EIOPA Solvency II DPM and XBRL taxonomy**

On 4 July 2017, Insurance Europe published its response to the EIOPA Consultation on 2.2.0 Public Working Draft release of the EIOPA Solvency II DPM and XBRL taxonomy (the “**Response**”)

Given the short timeline to respond to the consultation Insurance Europe noted in its Response that members have focused their attention on only some of the parts of the consultation package, including the validations and business requirements changes.

In the Response, Insurance Europe stressed the following:

- ▣ The shorter than anticipated timeline for the consultation prevented a more thorough assessment of the changes;
- ▣ EIOPA should ensure that changes to currently used taxonomy are published on time;
- ▣ EIOPA should ensure that unexpected changes to the taxonomy scope are avoided; and
- ▣ Clarity is needed on the reporting format of disclosure quantitative reporting templates (“**QRTs**”).

Insurance Europe’s response can be accessed [here](#).

(ii) Insurance Europe Publishes Response to Commission call for Evidence on the Operation of Collective Redress arrangements in the Member States of the European Union

On 21 August 2017, Insurance Europe published its response to the European Commission's Call for Evidence on the operation of collective redress arrangements in the EU Member States (the "**Call for Evidence**") (the "**Response**").

In the Call for Evidence, the European Commission is assessing how the Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the EU Member States concerning the violation of rights granted under Union Law is being implemented in practice. In the Recommendation, the European Commission stated that all Member States' legal orders should have collective redress mechanisms in areas where EU law grants rights to natural and legal persons. In addition, in the Recommendation, the Commission put forward standards aimed at easing access to justice in 'mass harm' situations, in particular to obtain compensation for the damage caused by an infringement of EU law ("compensatory collective redress") or to stop infringements of EU law ("injunctive collective redress").

In the Response, Insurance Europe stated that it believes that too little time has passed since the implementation of the Commission's 2013 Recommendation to properly assess the possible need for further regulation. The Response further notes that, in some Member States, instruments for collective action have only recently been enacted and in others they are being further developed. The Member States are introducing different models of collective action in line with their respective legal traditions and systems. Against this background, more time is necessary to see how these mechanisms function in the different legal traditions and systems and how effective the safeguards against possible abuse are. Insurance Europe believes that more safeguards should be introduced in respect of third party funding in instances where the funder has no relation to the claim, the claimant or a defendant.

In the Response, Insurance Europe also advocates the use of alternative dispute resolution mechanisms as these tend to be more speedy, efficient and effective routes to conflict resolution.

The Response can be found [here](#).

(iii) Insurance Europe publishes response to EIOPA consultation on the review of the Solvency II Delegated Regulation

On 4 September 2017, Insurance Europe published its response to the EIOPA Consultation on its first set of advices to the European Commission on the upcoming review of Solvency II (further details on the consultation are set out in Section (i) of the Solvency II Section) (the "**Response**").

In the Response, Insurance Europe welcomed the initial review of the Solvency II Regulatory Framework and supports its main goals, namely:

- ▣ To ensure a proportionate and technically consistent supervisory regime for insurance undertakings; and
- ▣ To look for possible simplifications in the SCR standard formula and to ensure the support and the application of the requirements.

While acknowledging that good progress has been made towards achieving these goals through EIOPA's proposals, Insurance Europe believes that additional work is required in a number of areas to achieve an optimum outcome to their review project.

In the Response, Insurance Europe has provided detailed feedback on the proposals addressed in EIOPA's first set of advice and notes that it looks forward to working in collaboration with EIOPA and other stakeholders on the remaining topics due to be addressed in the second set of advice. Examples of topics in the Consultation on which Insurance Europe provided comments include simplified calculations, the look-through approach to related undertakings, undertaking specific parameters, the treatment of guarantees, exposure guaranteed by a third party and exposures to regional governments and local authorities, risk, mitigation techniques and reducing reliance on ECAIs in the standard formula and not absorbing capacity of deferred taxes.

Insurance Europe's Response can be accessed [here](#).

Insurance (Amendment) Bill 2017

(i) Insurance (Amendment) Bill 2017

On 5 July 2017, the Irish Government approved the drafting of the Insurance (Amendment) Bill 2017 (the "**Bill**"). In a press release of the same date, the Minister for Finance and Public Expenditure and Reform announced that the Bill would be drafted to bring into force the recommendations of the Review of the Framework for Motor Insurance Compensation in Ireland.

The Bill will repeal certain provisions of the Insurance Act 1964 and bring legislation into line with the issues raised in the Supreme Court ruling in the case of *the Law Society of Ireland v The Motor Insurers' Bureau of Ireland* (Unreported, Supreme Court, 25 May 2017) [2017].

The press release sets out the main changes proposed in the Bill. Some of the main changes include:

- ▣ The increase in the level of the Insurance Compensation Fund ("**ICF**") coverage for future third party motor claims from 65% to 100%. This increase will be funded by the insurance industry and mechanisms will be in place to protect the industry should a motor insurer be liquidated.

- ▣ Terms will be included to ensure the Exchequer is repaid as quickly as possible where there is a shortfall in the industry ex-ante fund in the ICF.
- ▣ The fund will now be administered by the Central Bank of Ireland and the State Claims Agency will have a formal role should any insurance company fail.
- ▣ Time limits will be amended and an application to the High Court for payment may be made once in any three month period.

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

A copy of the general scheme of the Bill is available [here](#).

Packaged Retail Insurance-based Investment Products (“PRIIPs”)

(i) ESAs publishes Q&A guidance on PRIIPs KID during July and August 2017

On 4 July 2017, the European Supervisory Authorities (“ESAs”) published a Q&A guidance document (the “Q&A”) relating to the key information document (“KID”) requirements for PRIIPs under the PRIIPs Delegated Regulation ((EU) 2017/653). The Q&A includes answers to questions relating to the presentation, content and review of the KID, including the methodologies underpinning the risk, reward and costs information.

On 18 August 2017, the ESAs published an updated version of the Q&A which include additional questions concerning KID requirements for PRIIPs. It includes a new section covering "general topics" and includes a Q&A on the “categorisation of a retail investor” and new Q&As on “market risk assessment, methodology for assessing credit risk, summary risk indicator and presentation of costs”. In addition, the ESAs published certain diagrams explaining the risk and reward calculations required to be included in a KID.

A copy of the latest Q&A is available for download [here](#).

(ii) European Commission adopts guidelines on the application of PRIIPS Regulation

On 4 July 2017, the European Commission adopted guidelines on the application of the PRIIPs Regulation for PRIIPS.

The guidelines provide clarification on some highly discussed topics such as the territorial scope, existing commitments, multi-option PRIIPs, distribution and KIDs “on demand”.

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

(iii) ESAs publish advice on PRIIPs which target specific environmental or social objectives

On 28 July 2017, the ESAs published final technical advice to the European Commission specifying the details of the procedures used to establish whether a PRIIP targets specific environmental or social objectives and sets out guidelines on how to ensure that these objectives are consistently adhered to. The technical advice followed an earlier consultation held by the ESAs in February / March in response to a mandate from the European Commission.

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

(iv) Insurance Europe publishes position paper on the implementation of the PRIIPs Regulatory Technical Standards

On 8 August 2017, Insurance Europe published its position paper on the PRIIPs provisions and that still require clarification at Level 3 (the “**Position Paper**”).

In the Position Paper, Insurance Europe welcomes the ongoing efforts of the European Commission and the ESAs to provide guidance to the industry on the implementation of the revised PRIIPs Regulatory Technical Standards for the PRIIPs regulation noting that the contents of the recently published EC Communication as well as those of the first batch of Questions and Answers (“**Q&As**”) offer very valuable explanations. However, Insurance Europe believes that several clarifications are still required in the upcoming batches of Q&As which are essential to ensure that industry has the necessary degree of legal certainty to appropriately implement various provisions of the PRIIPs Regulation.

The Position Paper sets out the main clarifications needed which related to transaction costs for insurers, specific information for multi-option products (“**MOPs**”) underlying options and treatment of annuities. The Position Paper also sets out a number of technical issues that need clarification at Level 3.

The Position Paper can be accessed [here](#).

(v) Life Assurance Provision of Information (Amendment) Regulations 2017 published

On 4 September 2017, the Central Bank of Ireland published the Life Assurance Provision of Information (Amendment) Regulations 2017 (S.I. No. 392 of 2017) (the “**Amending Life Regulations**”).

The purpose of the Amending Life Regulations is to amend the Life Assurance Provision of Information Regulations 2001 (S.I. No. 15 of 2001) (the “**Principal Regulations**”) to clarify the position in respect of the pre-contractual disclosure required under Principal Regulations when the PRIIPs Regulation (1286/2014/EU), which also requires the provision of a pre-contractual key information document (the “**PRIIPs KID**”), comes into effect on 1 January 2018.

The Central Bank noted in its Dear CEO Letter of the same date that it decided that the disclosure document required under the Principal Regulations should be retained when the PRIIPs Regulation takes effect and that both pre-contractual disclosure document regimes, both personalised and generic respectively, will co-exist for an interim period pending the review by the European Commission of the PRIIPs Regulation, which is due to take place before the end of 2018.

Under the Principal Regulations, life undertakings in Ireland are required to provide certain information to prospective policyholders. More specifically, Regulation 7 of the Principal Regulations provides that certain information shall be specific to that client and to the premium proposed to be paid by that client.

However, Regulation 7(2) of the Principal Regulations provides for a derogation from this requirement where it is not practicable to give the information specific to the prospective policyholder. Instead, the insurer may provide such general information which applies to a standard policy of that type and to the premium payable in respect of such a standard policy.

Where a product falls within the scope of the PRIIPs Regulation, the Amending Life Regulations dis-apply the requirement set out in Regulation 7(2) of the Principal Regulations as the provision of another generic pre-contractual document in Ireland would conflict with the purpose of the PRIIPs Regulation.

The Amending Life Regulations will come into operation on 1 January 2018 when the PRIIPs Regulation takes effect.

The Central Bank's Dear CEO Letter further noted that the Central Bank expects regulated entities providing both pre-contractual disclosure documents under the PRIIPs Regulation and the Principal Regulations to clearly explain to retail investors the personalised nature of the Principal Regulations' disclosure document and the generic nature of the PRIIPs KID.

The Central Bank proposes to conduct consumer testing during 2018 in order to assess the effectiveness of both the PRIIPs KID and the current disclosure document required under the Principal Regulations in order to inform its consideration and discussions on the plan review of the PRIIPs Regulation by end of 2018.

The Amending Life Regulations can be found [here](#).

The Central Bank's Dear CEO letter can be found [here](#).

Capital Markets Union (“CMU”)

(i) ECB publishes response to the European Commission’s consultation on operations of the ESAs

On 7 July 2017, the ECB published its response to the European Commission’s consultation paper from March 2017 on the operations of the three European Supervisory Authorities (“ESAs”).

Amongst other points, the ECB reiterates that a strong Capital Markets Union (“CMU”) will require the creation of a single capital markets supervisor. The ECB also calls for it to be given voting rights, membership to ESAs boards and observer status to the ESMA board of supervisors.

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

(ii) Council of the EU publishes conclusions on European Commission's communication on the CMU action plan mid-term review

On 11 July 2017, the Council of the EU published its conclusions on the European Commission's communication of June 2017 on the Capital Markets Union (“CMU”) mid-term review.

The Council of the EU indicated that it welcomed the European Commission's communication on the CMU mid-term review. In addition, the Council of the EU indicated that it; (i) welcomed the European Commission’s proposals for amendments to the framework for the ESAs; (ii) looks forward to the upcoming legislative proposal regarding the prudential treatment of investment firms; (iii) looks forward to the upcoming legislative proposal regarding an EU framework for covered bonds; (iv) welcomed the European Commission’s proposals for a potential EU framework in the field of Fintech; (v) takes note of the European Commission's initiatives aimed at promoting long-term investment including an appropriately designed pan-EU personal pension product and an amendment to the Solvency II Delegated Regulation, in full respect of member states' tax competences; (vi) welcomes the initiatives aimed at strengthening banks' capacity to lend to the economy, including measures to support secondary markets for non-performing loans; and (vii) encourages the European Commission to assess options for a modern EU framework for the effective and binding resolution of investment disputes.

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

(iii) European Commission publishes a roadmap on treatment of cross-border intra-EU investments

On 25 July 2017, the European Commission published a roadmap on a new initiative under the CMU action plan on an interpretative communication on the existing EU standards for the treatment of cross-border intra-EU investments.

The roadmap aims to provide greater transparency on the effective protection of EU investor rights in the single market, thereby creating a more positive environment to attract investments. It is proposed that the European Commission will adopt an interpretative communication to provide guidance/ greater clarity on existing EU rules for the treatment of cross-border EU investments.

Among other things, the European Commission considers that the interpretative communication would help to prevent member states from adopting measures that would infringe upon EU law relevant to investments. Stakeholders were invited to provide feedback on the roadmap via the European Commission's webpage until 22 August 2017.

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

(iv) European Commission publishes a roadmap on the prevention and amicable resolution of investment disputes within the single market

On July 25 2017, the European Commission published a roadmap on a new initiative under the CMU action plan on the prevention and amicable resolution of intra-EU investment disputes. The roadmap aims to improve the investment climate in the EU by providing dispute prevention tools and tools for the effective amicable resolution of intra-EU investment disputes with the help of an independent third party. Stakeholders were invited to provide feedback on the roadmap via the European Commission's webpage until 22 August 2017.

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

(v) EBA publishes discussion paper on its approach to Financial Technology

In spring 2017, the EBA commenced a financial technology (“**FinTech**”) mapping exercise to establish an insight into financial services offered, innovations applied and regulatory treatment by FinTech firms in the EU.

On 4 August 2017, the EBA published a discussion paper on its approach to FinTech. The deadline for comments is 6 November 2017. A public hearing will be held on 4 October and those responses will depend on further actions the EBA will need to take in 2018.

A copy of the full discussion paper is available [here](#).

(vi) European Commission publishes consultation paper on removing barriers to efficient and resilient post-trade services

On 23 August 2017, the European Commission published a consultation paper entitled “Post-trade in a Capital Market Union: dismantling barriers and strategy for the future”.

As part of the CMU action plan, the European Commission is reviewing progress made in removing barriers to post-trade market infrastructure. The aim of the consultation is to

gather views on a range of issues including the current state of post-trade markets, the main trends and challenges faced by post-trade services providers and users as well as the best ways to remove barriers, including through financial technology. Stakeholders are invited to provide feedback, using an online questionnaire, until 15 November 2017.

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

(vii) European Commission speech on financial services initiatives for 2017 and early 2018

On 15 September 2017, the European Commission published a speech given on 14 September 2017 whereby the European Commissioner set out a number of financial services initiatives that the European Commission intends to take action on before the end of 2017 or in early 2018 such as; (i) its proposals for reforms to European System of Financial Supervision (“**ESFS**”) namely the review of the ESAs (that is, ESMA, EIOPA and the EBA) and the European Systemic Risk Board (“**ESRB**”); (ii) its FinTech action plan; and (iii) its sustainable finance action plan.

The ESFS, FinTech and Sustainable Finance initiatives form part of the European Commission's effort to establish a capital markets union.

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

(viii) European Commission publishes proposals for reforms to European System of Financial Supervision (“ESFS”)

On 20 September 2017, the European Commission published legislative proposals to reform the European System of Financial Supervision (“**ESFS**”) which proposes:

- ▣ To amend the Regulation 1092/2010 (the “**ESRB Regulation**”) to reform the ESRB's governance;
- ▣ To amend the Regulations that have established the ESAs and to give the ESAs additional powers and responsibilities and to reform the governance and funding arrangements;
- ▣ To amend the Markets in Financial Instruments Regulation (Regulation 600/2014) (“**MiFIR**”) and the Benchmarks Regulation ((EU) 2016/1011) to give ESMA additional direct supervisory powers; and
- ▣ To amend the proposals for EMIR reform.

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

Insurance Distribution Directive

(i) Department of Finance publishes responses to the consultation concerning the transposition of the IDD in Ireland

On 19 July 2017, the Department of Finance published responses it received to the consultation launched earlier this year on the transposition of EU Directive 2016/97 on Insurance Distribution (the “IDD”).

The purpose of the consultation was to assist with the transposition of the IDD by seeking views on Member State discretions contained within the IDD. Such discretions deal with the issues of:

- ▣ Registration Requirements (Article 3);
- ▣ Professional and Organisation Arrangements (Article 10);
- ▣ Advice and standards for sales (Article 20);
- ▣ Information Exemptions (Article 22);
- ▣ Cross-selling (Article 24);
- ▣ Information to customers (Article 29);
- ▣ Assessment of suitability and appropriateness and reporting to customers (Article 30);
- ▣ Administrative sanctions (Article 31); and
- ▣ Breaches, sanctions and other measures (Article 33).

The Department of Finance published the submissions it received from Brokers Ireland, Insurance Ireland and Irish Life Group.

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

(ii) Commission Implementing Regulation on IPID published in the Official Journal of the EU

On 12 August 2017, Commission Implementing Regulation (2017/1469/EU) of 11 August 2017 laying down a standardised presentation format for the Insurance Product Information Document (the “IPID”) (the “**Commission Implementing Regulation**”) was published in the Official Journal of the EU.

Under the IDD, manufacturers of non-life insurance products are required to draw up a standardised IPID so as to provide customers with the necessary information about non-life

insurance products in order to allow them to make an informed decision when buying insurance products such as car, travel or house insurance.

Article 20(8) of the IDD specifies the information that the IPID should contain. The Commission Implementing Regulation, which is based on draft Implementing Technical Standards developed by EIOPA, specifies how the information that is required by Article 20(8) of the IDD should be presented. Non-life insurers are required to use a common design, structure and format when presenting the information in the IPID so that customers are provided with product information which is easy to read, understand and compare.

Among other matters, the Commission Implementing Regulation sets out requirements in relation to the name and company logo of the manufacturer and specifies that the IPID must be no longer than two sides of A4 paper when printed. There is the possibility to extend the length to three sides of A4 sized paper in exceptional circumstances but where the manufacturer uses this extension, it must be able to demonstrate to the competent authority, upon request, that more space was needed.

The Commission Implementing Regulation also sets out the presentation and order of content of the IPID including the sequence of the sections, the headings and information to be included in each section and also the icons to be used in each section.

A template of the IPID is set out in the Annex to the Commission Implementing Regulation.

The Commission implementing Regulation entered into force on 1 September 2017. Member States are required to transpose the IDD by 23 February 2018. The IPID will have to accompany all non-life insurance policies from 2018.

The Commission Implementing Regulation can be accessed [here](#).

(iii) **European Commission adopts Commission Delegated Regulations supplementing IDD**

On 21 September 2017, the European Commission adopted two Commission Delegated Regulations supplementing the IDD as follows:

- ▣ Commission Delegated Regulation supplementing the IDD with regard to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products (“**IBIP**”) (“**IBIP Commission Delegated Regulation**”). More specifically, the IBIP Commission Delegated Regulation is based on three empowerments in the chapter on additional conduct of business requirements for the sale of IBIPs and aims to specify the criteria and practical details for the application of the rules on conflicts of interest, on inducements and on the assessment of suitability and appropriateness; and
- ▣ Commission Delegated Regulation supplementing the IDD with regard to product oversight and governance requirements (“**POG**”) (the “**POG Commission Delegated**”).

Regulation) for insurance undertakings and insurance distributors which specifies the criteria and practical details for the application of the POG rules.

Both of the Commission Delegated Regulations are based on draft consultations by the European Commission from July 2017. If neither the Council of the EU nor the European Parliament object to the Commission Delegated Regulations they will enter into force 20 days after their publication in the Official Journal of the EU and will apply from 23 February 2018.

A copy of the IBIP Commission Delegated Regulation can be found [here](#).

A copy of POG Commission Delegated Regulation can be found [here](#).

(iv) EIOPA launches questionnaire to gather data for its work on developing Q&As on the IDD

On 25 September 2017, EIOPA published a questionnaire to collect data from stakeholders to help inform its preparatory work on developing a set of questions and answers (“**Q&As**”) relating to insurance distribution activities by insurance distributors focusing on issues on the interpretation and application of the IDD as it feels such Q&A’s would be helpful to provide more clarity on the IDD requirements. EIOPA notes that it has already received questions from stakeholders on the IDD and recognises that it is likely that issues regarding consistent application of IDD and the need for co-ordination between NCAs will continue to emerge.

The questionnaire is structured mainly around the IBIP Commission Delegated Regulation and the POG Commission Delegated Regulation adopted by the European Commission on 21 September 2017 (as detailed in the section (iii) above).

The questionnaire is open for comments until 11 October 2017 and can be accessed [here](#).

Market Abuse Regulation (“MAR”)

(i) Commission Implementing Regulation on ITS regarding procedures and forms for competent authorities exchanging information with ESMA under MAR enters into force

Commission Implementing Regulation (EU) 2017/1158 on ITS regarding procedures and forms for competent authorities exchanging information with ESMA under the Markets Abuse Regulation (Regulation 596/2014) (“**MAR**”) entered into force on 20 July 2017.

A copy of the Commission Implementing Regulation is available [here](#).

(ii) ESMA publishes updates to the Q&A on MAR

During the period 1 July 2017 to 30 September 2017, ESMA has updated its MAR Q&A as follows:

- ▣ In July 2017 a new question (question 7.7) was added concerning the definition of a closely associated person in the context of manager's transactions under Article 3(1) (26) of MAR.
- ▣ In September 2017, questions and answers on the following topics were added concerning: (i) persons professionally arranging or executing transactions; (ii) market soundings; (iii) insider list requirements; and (iv) issuers' responsibility in case of delegation.
- ▣ On 29 September 2017, a new question (question 5.2) was added which addresses how an issuer should deal with a situation where it has delayed a disclosure of inside information in accordance with Article 17(4) of MAR and due to subsequent circumstances that information loses the element of price sensitivity and is no longer inside information.

A copy of the July 2017 Q&A is available [here](#).

A copy of the September 2017 Q&A is available [here](#).

(iii) ESMA publishes MAR Guidelines Compliance Table relating to commodity derivatives markets or related spot markets

On 28 August 2017, ESMA published a Guidelines Compliance Table under MAR. The Guidelines Compliance Table sets out which competent authorities have informed ESMA that they either comply, do not comply or intend to comply with the ESMA's guidelines on information relating to commodity derivatives markets or related spot markets for the purpose of the definition of inside information on commodity derivatives.

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

Transparency Directive

(i) Transparency (Directive 2004/109/EC) (Amendment) Regulations 2017

The Transparency (Directive 2004/109/EC) (Amendment) Regulations 2017, (S.I. No. 336 of 2017) (the "**2017 Transparency Regulations**") came into operation on 1 August 2017. The 2017 Transparency Regulations amend the Transparency (Directive 2004/109/EC) Regulations 2007 (the "**Principal Regulations**"). One of the main changes implemented by the 2017 Transparency Regulations is to introduce certain requirements for "extractive industry issuers" and "logging issuers".

A copy of the 2017 Transparency Regulations can be found [here](#).

Prospectus Directive

(i) **ESMA publishes Consultation Papers on EU Growth prospectus, scrutiny and approval and on the format and content of a prospectus**

On 6 July 2017, ESMA published three Consultation Papers proposing simplification of the Prospectus Regulation, with the objective of providing companies, mainly smaller companies, with easier and less expensive access to capital and to make prospectuses more accessible to investors.

The three Consultation Papers comprise:

- ▣ Consultation Paper on the format and content of the prospectus;
- ▣ Consultation Paper on EU Growth prospectus; and
- ▣ Consultation Paper on scrutiny and approval.

The consultations closed on 28 September 2017. ESMA will deliver a final report to the European Commission prior to the end of the first quarter of 2018.

The Consultation Papers can be found [here](#).

(ii) **Central Bank issues Q&A on new Prospectus Regulatory Framework**

On 4 August 2017, the Central Bank issued the first edition of the Prospectus Regulatory Framework Q&A, which updates and replaces the Frequently Asked Questions on the Prospectus Regulation previously published by the Central Bank.

A copy of the Q&A on the new Prospectus Regulatory framework can be found [here](#).

European Markets Infrastructure Regulation (“EMIR”)

(i) **ESMA publishes letter to European Commission on third-country regimes**

On 10 July 2017, ESMA published a letter addressed to the European Commission setting out its views on third-country regimes within the European Commission’s remit. In the letter, ESMA takes note of the EMIR reform proposals, particularly as regards the requirements for the recognition of third-country central counterparties (“**CCPs**”), which strengthens the third-country CCP regimes. ESMA welcomes the enhanced implementation and monitoring of equivalence decisions on third-country regimes by the European Commission. The letter goes on to state that the European Commission should consider similar proposals for other market infrastructures and key market players.

A copy of the ESMA letter to the European Commission on third-country regimes can be found [here](#).

(ii) ESMA publishes a final report on technical standards on data to be made publicly available by trade repositories under EMIR

On 11 July 2017, ESMA published a final report which summarises the feedback ESMA received to its December 2016 consultation on proposed changes to the Commission Delegated Regulation (EU) 151/2013 setting out the regulatory technical standards (“**RTS**”) on data to be made public by trade repositories (“**TRs**”) under EU Regulation 648/2012 (“**EMIR**”).

In the final report, ESMA outlines its proposed amendments to Commission Delegated Regulation (EU) 151/2013 and the RTS therein. The European Commission has three months to decide to endorse the proposed amendments submitted by ESMA.

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

(iii) Insurance Europe published response to European Commission proposal for EMIR reform

On 25 July 2017, Insurance Europe published its response to the European Commission proposal for changes to EMIR (the “**Position Paper**”). Insurance Europe, in particular, welcomed the changes relating to:

- ▣ Removing the requirement for dual-side reporting of exchange traded derivatives so that CCPs will be solely responsible for reporting the details of such transactions;
- ▣ Clarifying that the obligation to centrally clear, may be temporarily suspended by ESMA, thus ensuring that insurers are not exposed to liability in cases of CCP failure or exit from providing clearing services for particular contract types; and
- ▣ Attempting to address the access issues which small and medium-sized insurers face when trying to secure arrangements for the clearing members for the provision of central clearing services.

However, Insurance Europe also raised a number of concerns in the Position Paper including those relating to the area of intra-group transactions, the area of reporting and also the practical application of EMIR which requires insurers to post cash when centrally cleared.

The Position Paper can be accessed in full [here](#).

(iv) ISDA publishes a position paper on Brexit, CCP location and legal uncertainty

On 21 August 2017, ISDA published a position paper on central counterparty (“**CCP**”) location and legal uncertainty and on Brexit. The paper refers to the European Commission's June 2017 proposed Regulation amending the EMIR supervisory regime for EU and third-country CCPs.

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

(v) ESMA publishes final report on guidelines on the transfer of data between trade repositories under EMIR

On 24 August 2017, ESMA published its final report setting out guidelines for the transfer of data between TRs under EMIR. The guidelines apply from 16 October 2017 and ESMA will carry out an annual assessment of TRs' compliance with the guidelines.

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

(vi) ESMA publishes responses to its consultation on CCP conflicts of interest management under EMIR

On 25 August 2017, ESMA published the responses it received to its June 2017 consultation on guidelines relating to conflicts of interest under EMIR for the management by central counterparties (“**CCPs**”). Respondents include the European Association of CCP Clearing Houses (“**EACH**”), the International Swaps and Derivatives Association (“**ISDA**”) and the Futures Industry Association (“**FIA**”). It is anticipated that the final version of the guidelines will be published by the end of 2017.

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

(vii) ISDA releases latest version of the ISDA Standard Initial Margin Model

On 7 September 2017, ISDA released the latest version of the Standard Initial Margin Model (“**ISDA SIMM**”), which was in response to the launch of the new EMIR margin rules. The latest version has a number of improvements which will help develop the method of calculating initial margin requirements on non-cleared derivatives.

A copy of the full article from ISDA is available [here](#).

(viii) European Commission adopts Delegated Regulations on indirect clearing arrangements under EMIR and MiFIR

On 22 September 2017, the European Commission adopted two Delegated Regulations setting out regulatory technical standards (“**RTS**”) relating to indirect clearing arrangements for OTC derivatives and exchange-traded derivatives (“**ETDs**”) under EMIR and MiFIR. The Delegated Regulations are:

- ▣ Delegated Regulation amends the EMIR RTS contained in Delegated Regulation (EU) No 149/2013. A copy of Delegated Regulation can be found [here](#).
- ▣ Delegated Regulation contains an RTS which seeks to ensure consistency between Regulation (EU) No 600/2014 (“MiFIR”) and the EMIR requirements. A copy of Delegated Regulation can be found [here](#).

Once the European Parliament and the European Council have decided not to object to the Delegated Regulations, they will be published in the Official Journal of the EU. Thereafter, both Delegated Regulations will apply from 3 January 2018.

(ix) Council of EU publishes Presidency compromise proposal on proposed Regulation amending EMIR

On 28 September 2017, the Council of the EU published a Presidency compromise proposal on the proposed Regulation amending EMIR on:

- ▣ The clearing obligations;
- ▣ The suspension of the clearing obligation;
- ▣ The reporting requirements;
- ▣ The risk-mitigation techniques for OTC derivatives contracts not cleared by a central counterparty;
- ▣ The registration and supervision of trade repositories; and
- ▣ The requirements for trade repositories.

A copy of the Presidency compromise proposal can be found [here](#).

Credit Rating Agencies (“CRAs”)

(i) ESMA publishes responses to the consultation on CRA endorsement guidelines

On 16 August 2017, ESMA published the responses to the consultation held in April 2017 on updating its 2011 guidelines on the application of endorsement, which sets out conditions by which a credit rating agency established in the European Union may endorse a credit rating issued in a third country under the Credit Rating Agencies Regulation (Regulation 1060/2009). The finalised guidelines will be published in the fourth quarter of 2017, with the guidelines entering into force on 1 June 2018.

A copy of the responses are available [here](#).

Financial Services and Pensions Ombudsman

(i) Changes to Financial Services Regulation

In July 2017, two new pieces of legislation were signed into Irish law, which change the landscape of consumer complaints and make important changes to the offices of the Financial Services Ombudsman (“**FSO**”) and the Pensions Ombudsman.

- ▣ The Central Bank and Financial Services Authority of Ireland (Amendment) Act 2017 (the “**Amendment Act**”). The Amendment Act retrospectively amends the 6 year limitation period for certain types of complaints. Previous complaints which the FSO declined because of the date of conduct may now be able to be re-submitted relating to “long-term financial services”.
- ▣ The Financial Services and Pensions Ombudsman Act 2017 (the “**FSPO Act**”). The FSPO amends updates and consolidates legislation underpinning the FSO and the Pensions Ombudsman, amalgamating both offices to establish the Office of the Financial Services and Pensions Ombudsman. The time limit extension of the FSPO Act allows those making certain complaints relating to a “long-term financial service” and broadens the categories of individuals who may be subject to the Ombudsman’s compulsory information gathering powers, when investigating complaints about a financial service provider.

An article prepared by Dillon Eustace can be accessed [here](#).

A copy of the Central Bank and Financial Services Authority of Ireland (Amendment) Act 2017 can be found [here](#).

A copy of the Financial Services and Pensions Ombudsman Act 2017 can be found [here](#).

Central Bank of Ireland

(i) Central Bank publishes updated guidance on the establishment of an EEA Branch of an Insurance Undertaking

On 31 July 2017, the Central Bank of Ireland published “Guidance on the Establishment of an EEA Branch of an Insurance Undertaking” (the “**Guidance**”) which contains guidance for Irish authorised insurers proposing to establish a branch operation in another EEA Member State. This Guidance replaces the previous 2009 Central Bank guidance and has been updated for consistency with the Solvency II Directive.

The Guidance notes that it should be read in conjunction with the provisions of the Solvency II Regulations and also the recently-published EIOPA “Decision of the Board of Supervisors on the collaboration of insurance supervisory authorities’ (the “**Revised General Protocol**”). It notes that the Revised General Protocol sets out the framework for collaboration and cooperation between home and host National Supervisory Authorities (“**NSAs**”).

The Guidance sets out the procedures and timelines for notification to the Central Bank by an Irish insurer wishing to establish a branch in another EU/EEA Member State. It also sets out the procedures and timelines for the Central Bank to communicate the information to the Host NSA. Annex 1 of the Guidance sets out a checklist detailing the information which must be provided to the Central Bank as part of an insurer's notification.

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

(ii) Central Bank publishes Brexit FAQ

In July 2017, the Central Bank issued a Brexit related FAQ document providing general information to financial services firms considering relocating their operations from the UK to Ireland.

The Central Bank's FAQ addresses at a high level a number of topics including; (i) the Central Bank's approach to authorisation, its timelines and requirements; (ii) the impact of Brexit on existing Irish authorised firms; (iii) the Central Bank's proposed approach to issues concerning a firm's substance in Ireland; (iv) and the Central Bank's approach to outsourcing to the UK firms. It also deals with other questions such as whether Ireland has a similar regime to the UK's Senior Managers Regime and Certification Regimes. It also addresses the Central Bank's views on centralised risk management in the UK or elsewhere and whether a firm's key employees can hold more than one position before the entity goes live.

The FAQ provides links to the Central Bank's relevant website application documentation as well as explanatory material on the authorisation processes of the different regulatory regimes.

A copy of the Central Bank's FAQ document can be found [here](#).

(iii) Central Bank publishes Regulatory Service Standards Performance Report H1/2017

On 8 August 2017, the Central Bank published its Regulatory Services Standards Performance Report which relates to the period from January 2017 to June 2017 (the "Report").

The Report sets out the Central Bank's performance against service standards that it has committed to which relate to the authorisation of financial service providers and investment funds and the processing of Pre- Approval Controlled Functions IQ Applications and contact management.

The Central Bank published this Report because it is committed to providing a clear, open and transparent authorisation process, while ensuring a rigorous assessment of the applicable regulatory standards.

Overall for the reporting period, the Report indicates that the Central Bank's performance was met or exceeded against 43 of the 45 service standards which equates to a 96% performance rate.

The Report provides details of the service standards for the different types of financial services providers and also provides details on Fitness and Probity PCF service standards, contact management service standards and information on why applications for authorisation were withdrawn or were deemed dormant during the period.

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

(iv) Central Bank publishes Insurance Quarterly Newsletter

At the start of September, the Insurance Directorate of the Central Bank published its Insurance Quarterly Newsletter (the "**Newsletter**").

Amongst other matters, the Newsletter provides updates on:

- ▣ The activities of the Insurance Directorate of the Central Bank at national level and at European level through its active participation in EIOPA;
- ▣ The General Insurance Stress Testing Exercise 2017;
- ▣ The receipt of the First Annual Solvency II Returns, the Solvency Financial Condition Report and the Regulatory Supervisory Review for each regulated entity and the Central Bank's plans to share the findings of their review of these returns at the upcoming Industry Briefing on 24th October, 2017;
- ▣ Proposals to compile a repository of all Solvency Financial Condition Reports on the Central Bank website;
- ▣ The Central Bank's letter to CEOs of insurance undertakings in September requesting information on Brexit contingency planning and expects undertakings' responses by 31st October, 2017;
- ▣ Actions taken in relation to IT and cyber risk management and observations on these actions; and
- ▣ The discontinuation of the Annual Insurance Statistics publication, otherwise known as the "Blue Book".

The Newsletter can be found in full [here](#).

(v) Central Bank announces enhancements to the Regulated Disclosures submission process

On 14 September 2017, the Regulated Disclosures Teams in the Central Bank announced that they are currently upgrading their document management and workflow system which will affect submissions under the Prospectus, Transparency and Short Selling legislative regimes.

One change that will impact submitters is that of Excel templates which contain basic information about the submission will be required with each submission. It is similar to the process that is already in place for Final Terms submissions and Short Selling notifications whereby the Excel template will be machine-readable thereby increasing processing efficiency. The new system will be implemented in the first quarter of 2018.

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

Minimum Competency Code and Minimum Competency Regulations

(i) Central Bank introduces New Minimum Competency Standards

In September 2017, the Central Bank issued a revised Minimum Competency Code 2017 (“**MCC**”) along with the new Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1) Minimum Competency Regulations 2017 (the “**MCC Regulations**”). Together the foregoing will replace the former Minimum Competency Code 2011.

Following on from the public consultation late last year, the changes include requirements that:

- ▣ A regulated firm demonstrates that staff have obtained the appropriate competence and skills through experience or training gained in an employment context in addition to obtaining a relevant qualification;
- ▣ At least one key staff member involved in the design of a retail financial product must meet a prescribed standard of minimum competency;
- ▣ Board members of mortgage credit intermediaries must complete six hours of continuous professional development each year; and
- ▣ Regulated firms must carry out an annual review of staff members’ development and experience needs.

The revised Minimum Competency Code and the MCC Regulations will take effect on 3 January 2018.

An article prepared by Dillon Eustace on “Central Bank Introduces New Minimum Competency Standards” can be found [here](#).

A copy of the Minimum Competency Code 2017 and the Minimum Competency Regulations 2017 can be found [here](#).

Anti-Money Laundering (“AML”)/Counter-Terrorist Financing (“CTF”)

(i) Wolfsberg Group publishes updated guidance on anti-bribery and corruption compliance programmes for financial institutions

On 4 July 2017, the Wolfsberg Group published an updated guidance paper containing guidance on how financial institutions should create an effective anti-bribery and corruption compliance programme.

The guidance focuses on how institutions can manage their own bribery and corruption risk in respect of the behavior of their employees and third parties acting on their behalf.

The updated guidance paper makes essential changes to the definition of government/public officials, intermediaries and associated controls, risk management of investments and joint ventures, offering of employment and work experience and reducing the focus on customer-related anti money laundering provisions. The guidance paper goes on to state that the greater risk to financial institutions is from new business from a government/public official or a commercial entity rather than individual customers and should take a risk-based approach.

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

(ii) G20 Leader's statement on countering terrorism: aspects of interest for financial services sector

On 7 July 2017, the G20 published a Leader’s statement at Hamburg on countering terrorism. Amongst other matters, the G20 underlined its resolve to tackle all sources, techniques and channels of terrorist financing and reaffirmed its call for a swift and effective implementation of relevant UN Security Council Resolutions and the FATF standards worldwide.

A copy of the full G20 Leader’s statement can be found [here](#).

(iii) European Commission publishes a roadmap towards new methodology for EU assessment of high-risk third countries under MLD4

On 11 July 2017, the Council of the EU published a cover note and letter (dated 30 June) from Commissioner Vera Jourova to the Presidency of the Council of the EU, concerning the assessment of high-risk third countries under the Fourth EU Money Laundering Directive 2015/849/EU (“**MLD4**”).

The annex to the letter contains a roadmap which aims at delivering a new approach for identifying high-risk third countries by following a staged approach, focusing on priority

third countries first. The Commission wants to build on, complement, and maintain a consistency with the work of the Financial Action Task Force (“**FATF**”).

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

(iv) MLD4 - Update as regards to Central Register for beneficial ownership in Ireland

Pursuant to MLD4, each Member State is required to establish a central register of beneficial ownership of corporate and other legal entities, including trusts (the “**Central Register**”).

Under MLD4 it was envisaged that each such Central Registry would be implemented prior to the proposed transposition date for MLD4, namely, 26 June 2017. However, due to ongoing discussions in relation to the Fifth Anti-Money Laundering Directive (“**MLD5**”), which are now at an advanced stage, the Department of Finance has confirmed that the date for the establishment of the Central Register in Ireland is now expected to take place before the end of 2017.

(v) Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law (the “Eurocrime Directive”)

On 28 July 2017, Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law (the “**Eurocrime Directive**”) was published in the Official Journal of the EU.

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

(vi) EC publishes roadmap on access to centralised bank account registries

On 9 August 2017, the European Commission published a roadmap for widening access to centralised bank and payment account registries. The European Commission invited comments on the roadmap until 6 September 2017. The roadmap has an indicative planning date of quarter one, 2018.

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

(vii) FATF publishes Mutual Evaluation Report on Ireland

On 7 September 2017, the Financial Action Task Force (“**FATF**”) published its Fourth Mutual Evaluation Report on Ireland’s AML and CTF, based on its 2012 Recommendations. It has found that Ireland has a sound and substantially effective regime to tackle money laundering (“**ML**”) and terrorist financing (“**TF**”), but that it could do more to obtain ML and TF convictions. Ireland was found to be compliant with 10 of the Recommendations and non-compliant with 1 of them. It was rated as either largely compliant or partially compliant with the remainder of the Recommendations.

A copy of the full Dillon Eustace article entitled “The FATF evaluates Ireland’s AML/CTF measures” can be found [here](#).

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

(viii) Joint Committee of the ESAs publishes final guidelines under revised Wire Transfer Regulation

On 22 September 2017, the Joint Committee of the ESAs published its final guidelines under the revised Wire Transfer Regulation (Regulation (EU) 2015/847) (revised “**WTR**”) on the measures that payment service providers (“**PSPs**”) should take to detect missing or incomplete information on the payer or the payee. It also addresses the requisite procedures required to manage a transfer of funds which lack the required information. The final guidelines outline feedback from the April 2017 consultation and contain some changes to the original guidelines as a result of the feedback.

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

Data Protection

(i) EU Trade Association issues letter to European Commission on the consultation processes relating to GDPR guidelines

On 13 July 2017, a group of EU trade associations issued a letter (the “**Letter**”) to the European Commission on the Article 29 Working Party Stakeholder consultation process regarding guidelines under the General Data Protection Regulation (Regulation (EU) 2016/679) (“**GDPR**”).

More specifically, the Association for Financial Markets in Europe (“**AFME**”), the Association of Mutual Insurers and Insurance Cooperatives in Europe (“**AMICE**”), the European Federation of Insurance Subsidiaries (“**BIPAR**”), Business Europe, the European Banking Federation (“**EBF**”), the European Fund and Asset Management Association (“**EFAMA**”), the Federation of European Securities Exchanges (“**FESE**”), Pensions Europe, Insurance Europe and Invest Europe (the “**Associations**”) noted in the Letter that they welcome the opportunity to provide comments on GDPR guidelines published by the Article 29 Working Party but they expressed their concerns over the Working Party stakeholder consultation process.

The Associations noted that the consultation processes of the Article 29 Working Party to date have taken place with a 30-day deadline to respond. The Associations noted that this was too short a deadline, bringing to their attention the European Commission Guidelines for Stakeholder Consultation under the Better Regulation Agenda which provides for a 12 week consultation period for certain initiatives.

In the Letter, the Associations called on the Article 29 Working Party to ensure that the final GDPR guidelines are developed as swiftly as possible and that a reasonable consultation period is set.

The Associations recommended that, in the longer term, the Article 29 Working Party should follow the Better Regulations Guidelines and use a 12 week consultation period.

In the Letter, the Associations also suggested improvements to workshops which are used as part of the stakeholder consultation process and note an additional concern over the fact that the guidelines are non-binding but can still be introduced as compulsory requirements at national level and it is therefore important that such guidelines provide clarity and help facilitate implementation, and do not undermine the existing Level 1 provisions that were set as part of the political agreement.

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

(ii) EDPS Opinion on the Proposal for a Regulation on Privacy and Electronic Communications (the “ePrivacy Regulation”)

On 20 July 2017, a summary of the Opinion of European Data Protection Supervisor (the “EDPS”) (first published in April 2017) on the Proposal for Regulation on Privacy and Electronic Communications (the “e-Privacy Regulation”) (the “Proposal”) was published in the Official Journal of the EU (the “Opinion”).

Further to a request by the European Commission, the Opinion outlines the position of the EDPS on the Proposal to repeal and replace the e-Privacy Directive. The Opinion is structured as follows:

- ▣ Section 2 summaries the main observations about the Proposal focusing on the positive aspects;
- ▣ Section 3 deals with key concerns and provides recommendations on how to address them; and
- ▣ The Annex to the Opinion sets out additional concerns and recommendations for further improvements.

The EDPS welcomed and supports the Proposal which aims to protect the right to privacy guaranteed by article 7 of the Charter of Fundamental Rights, of which confidentiality of communications is an essential component.

The EDPS further welcomed the ambition to provide a high level of protection with respect to both content and meta-data and supports the objective of extending the confidentiality obligations to a broader range of services, including the so-called over the top services.

However, the EDPS raised certain concerns on the Proposal as set out in the Opinion.

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

(iii) Data Protection Commissioner publishes Guidance on Qualifications for Data Protection Officers under the GDPR

On 14 August 2017, the Data Protection Commissioner published guidance on appropriate qualifications for a Data Protection Officer (the “DPO”) (the “Guidance”) under the GDPR.

The GDPR requires the appointment of a DPO in certain circumstances. Article 37(5) of the GDPR, provides that the DPO “shall be designated on the basis of professional qualities and in particular expert knowledge of Data Protection Law and Practices and the ability to fulfil the tasks referred to in article 39”. The professional qualities referred to are not further defined or expanded upon in the GDPR and the Guidance notes that this allows organisations to decide on their DPO’s qualifications and training.

The Guidance further notes that the appropriate level of qualification and expert knowledge of a DPO shall be determined according to the personal data processing operations carried out, the complexity and scale of data processing, the sensitivity of the data being processed and the protection required for the data being processed.

The Guidance sets out examples of relevant skills and expertise which include:

- ▣ Expertise in national and European Data Protection Laws and practices including an in-depth understand of the GDPR;
- ▣ Understanding of the processing operations carried out;
- ▣ Understanding of information, technologies and data security;
- ▣ Knowledge of the business sector and the organisation; and
- ▣ The ability to promote a Data Protection culture within the organisation.

The Guidance notes that organisations should proactively decide on the qualifications and level of training required for their DPO and that organisations should be aware that there are various training options that may be pursued. The Guidance also sets out the following non-exhaustive list of factors be taken into consideration when selecting the appropriate DPO training program which includes:

- ▣ The content in means of the training and assessment;
- ▣ Whether training needed is certified by an accredited body and the standing of the accredited body; and
- ▣ Whether training and certification is recognised internationally.

The Guidance goes on to state that in any case a DPO should have an appropriate level of expertise in data protection law and practices to enable them to carry out their critical role.

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

(iv) Irish Data Protection Commissioner launches consultation on the topics of Transparency and International Data Transfers under the General Data Protection Regulation

The EU Article 29 Working Party will hold a third Fablab in Brussels on 18 October 2017 to consult with stakeholders on their views in relation to transparency and international data transfers under the GDPR. The Fablab will look at:

- ▣ The preparation of new guidelines on transparency under the GDPR; and
- ▣ The updating of existing guidelines on international data transfers.

Ahead of the Fablab, the Irish Data Protection Commissioner has launched an online consultation on the topics of transparency and international data transfers under the GDPR, which will run from 6 September 2017 until 13 October 2017.

A copy of the statement from the Data Protection Commissioner on the consultation can be found [here](#).

Non-Financial Reporting

(i) EU Directive on Non-Financial Reporting signed into Irish law

The European Union (Disclosure of non-financial and diversity information by certain large undertakings and groups) Regulations 2017 (S.I. no 360 of 2017) (the “**2017 Non-Financial Disclosure Regulations**”) were signed into Irish law 30 July 2017 by the Minister for Jobs, Enterprise and Innovation. The 2017 Non-Financial Disclosure Regulations implement the EU Directive on Non-Financial Reporting and will come into operation on 21 August 2017.

A copy of the 2017 Non-Financial Disclosure Regulation can be found [here](#).

Pensions

(i) EIOPA publishes a consultation paper on EIOPA’s regular information requests towards NCAs regarding provision of occupational pensions information

On 26 July 2017, EIOPA published a consultation paper on EIOPA’s quarterly and annual information requests towards the national supervisory authorities (“**NSAs**”) regarding the provision of occupational pensions information (the “**Consultation Paper**”). In the Consultation Paper, EIOPA proposes one comprehensive package of reporting templates to streamline all quantitative reporting requirements on occupational pensions. The single

comprehensive package of reporting templates proposed will be aligned with similar European and international reporting standards to ensure an efficient use of information for EIOPA and NSAs. The consultation period will end on 27 October 2017.

Also on 26 July 2017, EIOPA published an FAQ document entitled “FAQs - Public consultation on EIOPA's regular information requests towards national supervisory authorities regarding provision of occupational pension's information”

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

The FAQ document is available [here](#).

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September 2017

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