

# Insurance Quarterly Legal and Regulatory Update

**Period covered**

1 April 2015 – 30 June 2015

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## INSURANCE QUARTERLY LEGAL AND REGULATORY UPDATE

### Solvency II

#### (i) **The Central Bank's Consultation paper on "Domestic Actuarial Regime and Related Governance Requirements under Solvency II" (CP92)**

On 15 April 2015 the Central Bank of Ireland ("**Central Bank**") issued a Consultation Paper on "Domestic Actuarial Regime and Related Governance Requirements under Solvency II" ("**CP 92**"). CP 92 discussed the requirement to notify the Central Bank of the person responsible for the Actuarial Function, called the Head of Actuarial Function ("**HoAF**") which will be known as a PCF position. This will be done by the Central Bank's Fitness and Probity regime and will require pre – approval. The new PCF position will be introduced from the 1<sup>st</sup> January 2016 and the existing PCF positions of Chief Actuary and Signing Actuary will no longer exist.

The HoAF is required to provide an opinion to the Central Bank on an annual basis on the technical provisions of the undertaking which will be referred to as the Actuarial Opinion on Technical Provisions. The HoAF is additionally expected to provide an Actuarial Report on Technical Provisions to the Board on an annual basis. The outline of this report is provided for in the CP92. The HoAF is required to provide an opinion to the Board on the adequacy of the scenarios, including financial projections, considered as part of the Own Risk and Solvency Assessment ("**ORSA**") process of the undertaking.

CP 92 also discusses the requirement for High impact Companies to establish a Reserving Committee which must meet on a quarterly basis. The Committee will have responsibility for overseeing the governance around the calculation of the Technical Provisions and compliance with reserving policies. All High, Medium High and Medium Low impact entities are also required to engage a Reviewing Actuary to conduct a peer review of the Technical Provisions. The Reviewing Actuary cannot be an employee of the undertaking however for Medium High and Low undertakings, the Reviewing Actuary may be from the same group. Where the Actuarial Function is outsourced, the Reviewing Actuary cannot be from the same firm. A peer review must be conducted at least every 2 years for a High Impact undertaking, every 3 years for a Medium Impact undertaking and every 5 years for a Medium Low undertaking.

The consultation was open from 2 April 2015 to 29 May 2015.

The full consultation paper is available via the following link:

<http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP92%20Domestic%20Actuarial%20Regime%20and%20Related%20>





[Governance%20Requirements%20under%20Solvency%20II/Domestic%20Actuarial%20Regime%20and%20related%20Governance%20Requirements%20under%20SII%20CP92.pdf](#)

(ii) **EIOPA Chairman speech on Solvency II implementation**

Gabriel Bernardino, Chairman of the European Insurance and Occupational Pensions Authority (“**EIOPA**”) delivered a speech at the Solvency II Industry Event in Dublin on 20 April 2015. Throughout his speech, he spoke about the fundamental elements of Solvency II and how he sees the role of EIOPA in the move from regulation to supervision. He stated that there were going to be complex adjustments, however these are transparent in that we will see their effect through the disclosure requirements. Mr Bernardino stated that there will be two capital requirements, the Minimum Capital Requirements (“**MCR**”) and Solvency Capital Requirements (“**SCR**”), assuring a risk based calculation but also a more robust and simpler floor designed for ultimate supervisory action. He stated that this is a very important feature of the new system which perhaps ended up too complex but risk sensitivity was definitely achieved. He expressed that an overall level of prudence exists in the calculation of capital requirements and that the regime provides an explicit recognition of risk diversification.

Throughout his speech, Mr Bernardino also spoke about the Own Risk and Solvency Assessment (“**ORSA**”) and the risk culture in insurance undertakings. He stated that the implementation of the ORSA should be used as an opportunity to further embed the strong risk culture in the day-to-day operations of the undertakings, providing at the same time an appropriate balance with the natural sales driven culture. He spoke of Solvency II as one of the first insurance regulatory regimes in the world to allow for the use of internal models to calculate the undertaking’s Capital Requirements, with the internal models being more risk-sensitive, will better capture individual risk profiles and will provide a better alignment between the truly underlying economic risks and the Capital Requirements placed on insurance companies by Solvency II. He highlighted that going forward; it is the responsibilities of the Boards of insurance companies to ensure that internal models continue to adhere to the highest possible technical standards, and that the corresponding capital will continue to fulfil the prudential requirements set out in the Solvency II regime.

Mr Bernardino highlighted four areas for attention:

-  Strengthening corporate governance;
-  Addressing mis-selling;
-  Enhancing conduct of risk supervision; and
-  Ensuring credible and dissuasive enforcement.

Another major step of Solvency II, stated by Mr Bernardino, will be the harmonised reporting requirements and EIOPA's role in this.

The speech in full is accessible via the following link:

<https://eiopa.europa.eu/Publications/Speeches%20and%20presentations/2015-04-20%20Solvency%20II%20Industry%20Event.pdf>

### **(iii) Solvency II Newsletter**

On 17 April 2015, the Central Bank published its April edition of its Solvency II newsletter. In the opening message of the newsletter, the Director of Insurance of the Central Bank, Sylvia Cronin, stated that as the Solvency II implementation date is approaching, the areas of data and reporting continue to be a cause of concern for the Central Bank. She also stated that alongside the introduction of Solvency II, the Central Bank will also be introducing additional Insurance and Statistical National Specific Templates.

The newsletter referred to a demonstration of the Online Reporting System (“**ONR**”) that was held on 13 April 2015 by the Central Bank's Information Technology Division. The system will be used for the submission of Solvency II Preparatory Reporting data. The slide packs and related user manuals for the ONR system are also now available to view or download from the Central Bank's website.

The newsletter also discusses the Forward Looking Assessment of Own Risks (“**FLAOR**”) Reporting Tool for Low and Medium Low Undertakings which has recently been updated. The Central Bank has requested that the relevant firms use the updated version of the reporting tool when making their 2015 FLAOR submission via the ONR which is available via the Central Bank's website.

The Central Bank has provided links to the previously published the Solvency II relevant risk free interest rate term structures for 31 March 2015 published by EIOPA on 10 April 2015. These can also all be accessed via the Central Bank website.

The newsletter in full is accessible via the following link:

<https://www.centralbank.ie/regulation/industry-sectors/insurance-companies/solvency2/Documents/Solvency%20II%20Matters%20-%20April%202015.pdf>

### **(iv) Updated Solvency II Data Point Model and XBRL taxonomy**

On 21 April 2015, EIOPA released updated information on its Solvency II data point model (“**DPM**”) and Extensible Business Reporting Language (“**XBRL**”) taxonomy package (version 1.6). This is a first draft version of the full scope Solvency II package which is not meant to be used for reporting. Its purpose is to demonstrate planned changes in

modeling as well as technical implementation in XBRL comparing to EIOPA Solvency II Preparatory DPM and XBRL taxonomy releases (versions 1.5.2.b and 1.5.2.c). The information published also identifies areas that are potentially subject to change. EIOPA has also updated the Solvency II reporting format webpage with revised information on the DPM and XBRL taxonomy design that have been developed in accordance with its guidelines on the submission of information to national competent authorities (“NCAs”). The updated webpage contains links to a zip package containing the updated XBRL taxonomy package, a zip package containing a DPN dictionary and annotated templates.

The release notes for Public Working draft can be accessed via the following link:

[https://dev.eiopa.europa.eu/Taxonomy/Full/1.6.0/EIOPA\\_SII\\_PWD\\_1.6.0\\_Release\\_notes.pdf](https://dev.eiopa.europa.eu/Taxonomy/Full/1.6.0/EIOPA_SII_PWD_1.6.0_Release_notes.pdf)

#### (v) **Solvency II – New Jurisdictions to Receive Equivalence Status**

On 5 June 2015, the European Commission published a press release stating that it has adopted its first third country equivalence decisions under Solvency II, the EU's new prudential regulatory regime which sets out rules to develop a single market for the insurance sector.

After receiving equivalence, EU insurers can use local rules to report on their operations in third countries, while third country insurers are able to operate in the EU without complying with all EU rules. These equivalence decisions take the form of delegated acts. They provide more legal certainty for EU insurers operating in a third country as well as for third country insurance companies operating in the EU.

Jonathan Hill, EU Commissioner for Financial Stability, Financial Services and Capital Markets Union stated that *“the decisions taken today will lead to more choice and competition for European consumers and also enable European insurers to compete more effectively in overseas markets. So this should be good for European businesses and the European economy.”*

Switzerland is granted full equivalence, for an indefinite period in all three areas of Solvency II: solvency calculation, group supervision and reinsurance. This decision, which is based on a report by the EIOPA, finds the Swiss insurance regulatory regime to be fully equivalent to Solvency II.

The EU's expert group on banking, payments and insurance, a consultative body consisting of specialists appointed by EU Member States to advise the European Commission on the preparation of its delegated acts for Solvency II also recently announced that the EU Commission has assessed the following countries to be “provisionally equivalent” under Article 227 of Solvency II, for the purpose of the group solvency calculation:

- ▣ Australia;
- ▣ Canada;
- ▣ Bermuda;
- ▣ Mexico; and
- ▣ Brazil;
- ▣ the United States.

Provisional equivalence in respect of Article 227 of Solvency II means that the regulatory regime in respect of the group solvency calculation in these jurisdictions is deemed to be equivalent to that of the EU jurisdictions for 10 years. The EU Commission has stated that it is expected to adopt delegated acts in respect of the provisional equivalence status of the above jurisdictions in the second quarter of 2015.

These decisions will need to be passed to the European Parliament and the Council for approval, for which the time limit is three months, with possible extension by a further three months. Publication in the EU Official Journal and entry into force will only take place after successful completion of European Parliament and Council scrutiny.

This development is likely to be welcomed by EU insurers with operations in the above countries given that it will enable them to use local solvency rules instead of Solvency II to calculate the regulatory capital requirements in those jurisdictions. The United States is expected to begin negotiations with the EU about equivalence in respect of reinsurance (Article 172 of Solvency II) and group supervision (Article 260 of Solvency II) in the second half of 2015.

On 30 June 2015, EIOPA subsequently published an overview of the equivalence decisions adopted by the European Commission which can be accessed via the following link:

<https://eiopa.europa.eu/external-relations/equivalence>

#### (vi) **Solvency II Updated Information Notes Published**

The Central Bank has recently published additional Information Notes:

- ▣ **Information Note 6**, issued in April 2015, sets out details of the Central Bank's approach to the first set of the EIOPA Solvency II Guidelines which were issued in February 2015; and
- ▣ **Information Note 7**, issued in May 2015, aims to update industry on some of the key points arising from the external User Acceptance Testing ("UAT") process. The note also serves to advise updates on some issues around taxonomy validations, filing rules and the restrictions around file sizes for narrative reporting.

The Central Bank confirmed its intention to comply with all of the Guidelines and noted that it expects (re)insurers to do likewise. The Central Bank has also published on its website, that under Article 16(3) of the EIOPA Regulation NCAs are required to make every effort to comply with EIOPA Guidelines. This obligation is also contained in Article 71(2)(b) of the Solvency II Directive. The Central Bank intends to comply with Set 1 of the Guidelines and will incorporate them into its supervisory practices as appropriate. The Central Bank expects insurance and reinsurance undertakings to comply with the provisions in Set 1 of the Guidelines.

The Central Bank Solvency II Information Notes 6 and 7 are available via the following links:

<http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/solvency2/Documents/Information%20Note%206%20-%20Set%201%20of%20Guidelines.pdf>

<http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/solvency2/Documents/Information%20Note%207%20-%20Preparatory%20Phase%20Reporting.pdf>

**(vii) EIOPA Q&As on guidelines on group solvency and classification of own funds**

EIOPA published three Q&As relating to the Guidelines on Group Solvency, Classification of Own Funds, Undertaking Specific Parameters and Risk Free Interest Rates. Of particular note are the FAQs on Classification of Own Funds, where EIOPA sets out its position on the impact of dividend stopper arrangements on Tier 1, 2 and 3 own fund items.

The Guidelines can be found on the EIOPA website where there is a list of all the Q&As to date, alternatively via the following link:

<https://eiopa.europa.eu/Pages/Guidelines/QA-on-Guidelines.aspx>

**(viii) EIOPA Update on Solvency II Preparations**

On 6 May 2015, EIOPA updated its website in relation to the Solvency II Directive (2009/138/EC) in order to provide (re)insurers and any other market participants with the necessary information needed on the new regime.

The website provides links to all the regulatory framework including the first six Implementing Technical Standards (“ITS”) recently adopted by the European Commission. These cover all the supervisory approval procedures that are crucial for the Solvency II phasing-in period that began on 1 April 2015. EIOPA has also announced that it is currently considering feedback received in relation to the public consultation on the



second set of Solvency II ITS and Guidelines with intentions to publish feedback during Quarter 3 of 2015.

On 30 June 2015, EIOPA stated that it intends to send the final set of ITS (i.e. Set 2) to the EC for endorsement, in particular those related to the harmonised regular reporting requirements under Solvency II.

**(ix) EIOPA report on Staffing and Resources needed to Accomplish Solvency II Tasks**

On 7 May 2015, EIOPA published a report on staffing and resources needed to accomplish tasks, in accordance with the Solvency II Directive (2009/138/EC). Under Article 310a of Solvency II, EIOPA is required to assess the staffing and resource needs arising from the assumption of its power and duties in accordance with Solvency II, and to submit a report to the European Parliament, the Council of the EU and the European Commission.

The report provides EU institutions with an assessment of EIOPA's staffing and financial resource needs for taking up its new powers and duties in insurance regulation and supervision allocated by Solvency II. The calculations in the report cover the period 2013 to 2018. The main focus of the report is on the duties and powers introduced by the Omnibus II Directive (2014/51/EU), which impose new requirements on EIOPA that are consequentially not covered in the European Commission's original budget and establishment plan for EIOPA.

EIOPA concludes in the report that there is a shortfall in its budget and human resources in 2015 of ten staff members and €2 million. EIOPA has stated that its budget should be extended both with regard to staff costs and operational budget to cover additional required expenditures, or has warned of unintended negative consequences in the insurance sector.

EIOPA has called for urgent action from EU institutions to provide it with necessary resources, in particular, considering the impact and potential disruptions to the insurance sector if EIOPA is not in a position to deliver. In light of resource constraints, EIOPA is currently allocating resources to the time-critical tasks arising from Omnibus II.

The report in full is accessible via the following link:

<https://eiopa.europa.eu/Publications/Reports/EIOPA-BoS-15-078%20Report%20on%20Staffing%20and%20Resource%20needs.pdf>

**(x) EIOPA Technical Advice – Solvency II recovery plans and finance schemes**

On 27 March 2015, EIOPA published its finalised technical advice to the European Commission on the Regulatory Technical Standards on the recovery plans and finance schemes to be provided by insurers in case of non-compliance with SCR and MCR under

Solvency II. The Technical Advice was produced upon the request by the European Commission for advice on the content of the delegated acts related to Articles 138 (2), 139 (2) and 141 of the Solvency II Directive.

The Technical Advice also identifies supervisory measures which can be taken in cases of deteriorating financial conditions.

In its Technical Advice EIOPA:

- ▣ advocates the submission of one combined recovery plan and finance scheme in case of simultaneous non-compliance with both SCR and MCR;
- ▣ highlights the criteria for the supervisory approval of the submitted recovery plan or finance scheme;
- ▣ provides a non-exhaustive list of the measures that can be taken by supervisors towards the relevant companies where their solvency position deteriorates further; and
- ▣ describes the circumstances to be taken into account by supervisors when deciding on the measures to be adopted.

EIOPA believes that the provisions of its Technical Advice allows for a quick and precise supervisory response to be applied when interests of policyholders are at risk due to the delicate financial situation of the insurance company.

The Technical Advice in full is accessible via the following link:

[https://eiopa.europa.eu/Publications/Reports/EIOPA-BoS-15-052\\_Final-Report\\_Advice\\_Recovery\\_for\\_Publication\\_27032015.pdf](https://eiopa.europa.eu/Publications/Reports/EIOPA-BoS-15-052_Final-Report_Advice_Recovery_for_Publication_27032015.pdf)

**(xi) EIOPA raises concerns with Solvency II internal models**

On 14 April 2015, EIOPA published an opinion expressing concerns regarding inconsistencies between EU Member States when considering and approving applications by insurers to use their own internal models to calculate new capital requirements.

EIOPA identified several areas where NCAs could potentially jeopardise a new EU-wide regulatory regime without a harmonised internal model approval process. In their opinion, EIOPA developed the following opinions recommending to NCAs the preferred options in dealing with these areas:

- ▣ The modeling of sovereign exposures;

- ▣ The practical preparation of the application in the absence of some related formal decisions; and
- ▣ The use of comparative studies as a complementary tool in the analysis of internal models.

EIOPA is concerned that different approaches to internal modeling could affect convergence and lead to an imbalance as the internal model is one area that is particularly prone to inconsistent approaches. EIOPA has stated that it intends to continue monitoring the approach taken in order to improve internal models and will engage with NCAs to understand what actions have been taken following EIOPA's opinion. EIOPA will then consider what further measures are required to ensure consistent approaches.

EIOPA's full opinion can be found via the following link:

<https://eiopa.europa.eu/Publications/Opinions/EIOPA-BoS-15-083%20Opinion%20on%20IMs%20%28April%202015%29.pdf>.

**(xii) The Central Bank publishes Solvency II Matters Issue 18 and 19**

The Central Bank published Issue 18 of the Solvency II Matters in May 2015. Throughout the edition, the Central Bank discusses several data queries and reporting obligations. It also spoke about the go-live of Solvency II Preparatory Phase Reporting, recent policy decisions on quarterly reporting and the frequency of submission of the Regular Supervisory Report (“**RSR**”). The edition provides undertakings with an outline of Solvency I and Solvency II reporting obligations for 2015, 2016 and 2017.

Throughout the edition, the Central Bank highlighted that High and Medium impact undertaking's deadline for filing the reporting due under the Preparatory Phase Guidelines was 3 June 2015, and that relevant group submissions are required by 15 July 2015. The Central Bank continued to state that there is no requirement for Low and Medium Low undertakings to submit Solvency II reporting during the preparatory phases in 2015.

The Central Bank has stated that despite external stakeholders raising the issue of duplication of Solvency I and Solvency II reporting requirements in respect of Q3 and Q4 2015, there will be no exemptions from Solvency I quarterly reporting requirements for undertakings. The Central Bank stated that this decision was based on the loss of consistent solvency and trend information for the affected quarters. The absence of quarterly reporting in respect of Q4 2015 would result in a period of several months where no data has will be submitted by undertakings.

Issue 18 can be accessed in full via the following link:

<https://www.centralbank.ie/regulation/industry-sectors/insurance-companies/solvency2/Documents/Solvency%20II%20Matters%20-%20May%202015.pdf>

The Central Bank published Issue 19 of the Solvency II Matters in June 2015. With six months remaining ahead of Solvency II implementation, the Central Bank expressed the importance of understanding all of the implementation issues facing the industry.

The Central Bank announced that it is completing a review of the existing guidance, guidelines and requirements that are available on its website, to establish its applicability of the existing material under the new Solvency II regime. An industry survey is expected to be issued by the Central Bank in September 2015 to assess the preparedness of Irish Insurance Undertakings for Solvency II implementation (a previous survey was issued in November 2014).

The Central Bank announced that they were pleased to note that all High and Medium Impact undertakings that were due to submit Preparatory Phase Quantitative Reporting Templates (“QRTs”) succeeded in doing so and subsequently all passed the Central Banks initial XBRL taxonomy checks. The Central Bank is now required to transmit the QRT data reviewed to EIOPA by 1 July.

The Central Bank announced that in November 2015, all High and Medium impact undertakings will be required to submit quarterly data in respect of Q3 2015. EIOPA has recently issued a revised set of filing rules which must be used for this submission. The actual submission date has not yet been announced however the Central Bank stated that this will be realised shortly.

The Central Bank has also reminded that undertakings are reminded to keep a close watch on the EIOPA website for the finalised Solvency II reporting requirements which are expected to be published in September 2015.

Issue 19 can be accessed in full via the following link:

<https://www.centralbank.ie/regulation/industry-sectors/insurance-companies/solvency2/Documents/Solvency%20II%20Matters%20-%20June%202015.pdf>

**(xiii) Q&As about the publication of the Solvency II relevant risk-free interest rate term structures**

On 8 June 2015, the EIOPA published the technical information on the relevant risk-free interest rate (“RFR”) term structures to be applied by (re)insurance undertakings in the calculation of their technical provisions with reference to the end of May 2015.

EIOPA also updated the list of answers to frequently asked questions (“FAQs”) with some refinements on the RFR calculations.

The technical information and updated Q&As can be accessed in the documents via the following links:

<https://eiopa.europa.eu/regulation-supervision/insurance/solvency-ii-technical-information/risk-free-interest-rate-term-structures>

<https://eiopa.europa.eu/Publications/Standards/Draft%20QA%20RFR%20calculations%2031052015.pdf>

**(xiv) EIOPA publishes symmetric adjustment of Solvency II equity capital charge**




EIOPA has published further technical information on the symmetric adjustment of the equity capital charge for Solvency II. Updates were provided in April and May 2015 in order to assist in the calculation of solvency positions. These publications continue to aim to help insurers to calculate their solvency position and to deliver reporting templates for the Solvency II preparatory phase. This technical information will continue to be updated on a monthly basis, based on the behaviour of the equity index prepared by EIOPA for this purpose

The full set of technical information can be found via the following link:

<https://eiopa.europa.eu/regulation-supervision/insurance/solvency-ii-technical-information/symmetric-adjustment-of-the-equity-capital-charge>

**(xv) Technical documentation of the methodology to derive EIOPA's risk-free interest rate term structures**

On 19 June 2015, EIOPA published a report containing the modified methodology for calculating the risk-free interest rate term structures for Solvency II. The modification relates to the daily fixing times of the swap rates, overnight indexed swap rates and government bond rates that the calculation is based on. In the future the fixing time for different currencies will be as follows:

-  For European and African currencies - London market closing time;
-  For currencies of Asia and Australia - Tokyo market closing time; and
-  For American currencies - New York market closing time (remains unchanged).

The aim of the change is to improve the reliability of the market rates used in the calculation by determining them at times of high trading activity. The average impact of the change on the term structures is expected to be very low.

The modified methodology will be applied for the first time for the derivation of the term structures of end-June 2015, which will be published in July 2015. The technical documentation has been updated to reflect the modification. The changes are reflected in table 1, on pages 23-24, paragraph 85(d) on page 24 and table 7 on page 34.

EIOPA will continue reviewing the methodology to implement any necessary changes in time before the start of Solvency II on 1 January 2016.

The modified methodology is available via the following link:




[https://eiopa.europa.eu/Publications/Standards/20150619%20RFR%20BoS%20Technical\\_Documentation%20quick%20fix%20%28clean%29.pdf](https://eiopa.europa.eu/Publications/Standards/20150619%20RFR%20BoS%20Technical_Documentation%20quick%20fix%20%28clean%29.pdf)

## EIOPA Update

### (i) **EIOPA opinion on the preparation for Internal Model Applications**

On 14 April 2015, EIOPA published an opinion on the preparation of Internal Model applications, issued under the provisions of Article 29(1)(a) of Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010.

As established in Article 29(1)(a) of the Regulation, EIOPA shall play an active role in building a common European Union supervisory culture and consistent supervisory practices, as well as in ensuring uniform procedures and consistent approaches throughout the European Union. EIOPA has provided an opinion concerning the preparation to the application to use an Internal Model (“**IM**”) for the calculation of the SCR. The opinion consists of:

-  the modelling of Sovereign Exposures;
-  the practical preparation of the application in the absence of some related formal decisions; and
-  the use of comparative studies as a complementary tool in the analysis of internal models.

The opinion has been addressed to the NCA represented in EIOPA’s Board of Supervisors however it is still of interest to (re)insurers preparing internal model applications, as it will affect the way in which the regulators respond when they receive an application for permission to use a model.

The opinion in full can be accessed via the following link:

[https://eiopa.europa.eu/Publications/Opinions/EIOPA-BoS-15-083%20Opinion%20on%20IMs%20\(April%202015\).pdf](https://eiopa.europa.eu/Publications/Opinions/EIOPA-BoS-15-083%20Opinion%20on%20IMs%20(April%202015).pdf)

**(ii) Insurance Europe responds to EIOPA on PRIIPs product intervention powers**

On 2 March 2015, Insurance Europe published its response to EIOPA's consultation on product intervention powers under the packaged retail and insurance-based investment products (“**PRIIPs**”). The consultation will feed into the development of EIOPA's final technical advice to the European Commission on this issue.

Key points highlighted include that, EIOPA's final advice to the European Commission should make clear that the legal powers conferred on EIOPA and the national supervisory authorities to intervene arises under the PRIIPs Regulation (EU) No. 1286/2014, as well as clarifying that the intervention powers conferred on EIOPA and the national supervisors should only be invoked in exceptional circumstances. Insurance Europe also highlighted that certain criteria and factors proposed by EIOPA fall outside the scope of the PRIIPs Regulation, while others are irrelevant or unclear.

The full response is available via the following link:

<http://www.insuranceeurope.eu/uploads/Modules/Publications/response-to-eiopa-on-product-intervention-powers.pdf>

**(iii) EIOPA publishes revised work programme**

In April 2015, EIOPA announced that it had reprioritised its 2015 work programme as a result of a 7.6% reduction in its budget. It has had to cut 27 projects from the programme completely, 31 products were reduced and 12 have been downgraded. EIOPA has stated that these limitations from human resources and budget perspectives have led to difficult choices in result having to postpone or even cut high priority products. Solvency II is its highest priority but EIOPA says the cuts have affected some of its initiatives here.

The reprioritised Work Programme for 2015 is accessible via the following link:

<https://eiopa.europa.eu/Publications/Administrative/Revised%20EIOPA%20Annual%20Work%20Programme%202015%20Pending%20Procurement%20Plan.pdf>

**(iv) EIOPA updates on the major risks to financial stability**

On 1 June 2015, EIOPA published its Financial Stability Report May 2015 (the “**Report**”). Throughout the report, EIOPA observes that the risks identified in the previous report (December 2014) remain broadly unchanged, similarly consisting of:

- ▣ a weak macroeconomic environment;
- ▣ protracted low interest rates; and
- ▣ increased credit risks which continue to affect the (re)insurance and occupational pension sectors of the European Economic Area.

The Report states that the current quantitative easing (“QE”) policy in the euro area may create favourable conditions for insurers and pension funds in the long run provided that economic growth improves however, in the short-term, QE has further lowered the risk-free rate and, thus, put an additional pressure on certain insurers’ and pension funds’ business models. The QE programme might also significantly reduce market volume for some asset classes. In such circumstances, the herding behaviour of investors related, for example, to a deteriorating geopolitical situation, could trigger a risk reversal or “double-hit” scenario.

In the insurance sector, returns and profitability of products remain under strong pressure with a potential negative impact on solvency. In the reinsurance sector, risks arising from the low yield environment may urge the reinsurance industry to further consolidate. Reinsurance premiums have been pressurised as companies face continuing competition from non-traditional sources of capital.

The occupational pension funds sector also increasingly faces challenges. Defined benefit plans are negatively affected by declining interest rates, in much the same way as guaranteed return insurance products. The future income of defined contribution schemes is also under constraint.

Gabriel Bernardino, Chairman of EIOPA, stated that “today’s macroeconomic reality is creating severe challenges for certain insurance and pension fund business models. In this environment it is fundamental that supervisors monitor the situation very closely and challenge the industry on the sustainability of their business models. Furthermore, action is needed from the industry to deal with the vulnerabilities of the “in-force” business and to restructure their mix of products. The transitional measures included in Solvency II should be used to ensure a smooth transition to the new regime, avoiding disruptions in the market, while ensuring that firms will take the necessary steps to restructure their businesses”.

The Report in full is available via the following link:

[https://eiopa.europa.eu/Publications/Reports/Financial\\_Stability\\_Report\\_May\\_2015.pdf](https://eiopa.europa.eu/Publications/Reports/Financial_Stability_Report_May_2015.pdf)

**(v) EIOPA updates risk dashboard: June 2015**

On 8 June 2015, EIOPA published an updated version of its risk dashboard which takes the form of a presentation. The dashboard relates to data submitted on a “best efforts”



basis during the first quarter of 2015. EIOPA states that the risk environment facing the insurance sector remains challenging. Among other things, it lists the following points of interest:

- ▣ Market, liquidity and funding risks are unchanged since the last review;
- ▣ Insurance companies' profitability will continue to be challenged by the persistent low interest rate environment;
- ▣ The risk sensitiveness to be introduced under the Solvency II Directive capital requirements will increase awareness on exposure to products with long-term guarantees, especially in low yield environments. In response, insurers will likely adapt their business models or their asset and liability management (“ALM”) strategies, or both; and
- ▣ Interlinkages and imbalances which still create uncertainties. Contagion risks from banks, and interlinkages with reinsurers, should not be neglected.

The risk dashboard can be accessed via the following link:

[https://eiopa.europa.eu/Publications/Standards/EIOPA-FS-15-070-PUBLIC\\_08062015.pdf](https://eiopa.europa.eu/Publications/Standards/EIOPA-FS-15-070-PUBLIC_08062015.pdf)

**(vi) Financial Regulatory Developments 12 June**

On 8 June 2015, EIOPA issued an update to its Risk Dashboard for Q1 2015. EIOPA highlighted that the Risk Dashboard does not address varying prospects for different European regions. The dashboard shows unchanged market risks and liquidity and funding risks, but EIOPA warns there may be challenges to solvency ratios ahead and that the risk environment facing the insurance sector remains challenging.

The updated Risk Dashboard is available via the following link:

[https://eiopa.europa.eu/Publications/Standards/EIOPA-FS-15-070-PUBLIC\\_08062015.pdf](https://eiopa.europa.eu/Publications/Standards/EIOPA-FS-15-070-PUBLIC_08062015.pdf)

**(vii) Interview by Andrew Candland, Head of EIOPA Oversight Unit, conducted by Noel Hillmann.**

On 12 June 2015, EIOPA published an interview by Andrew Candland, Head of EIOPA Oversight Unit, the Report “Insurance Risk and Operations, Europe 2015”. The interview focused on the following topics:

- ▣ How an internal model should look;
- ▣ How internal models are reviewed against the standard model framework;

- ▣ A need for an update of the standard model framework;
- ▣ Testing of the internal model framework;
- ▣ How regulators protect insurers against the risk of sensitive and proprietary data being released through the insurers risk modelling techniques and what level of adequacy of information must be provided; and
- ▣ Areas of risk

The questions and answers from the interview are available in full via the following link:

<https://eiopa.europa.eu/Publications/Interviews/Interview%20by%20Andrew%20Candland.pdf>

#### **(viii) Insurance distribution in a challenging environment**

On 12 June 2015, EIOPA published a speech given by Gabriel Bernardino, Chairman of EIOPA, on 4 June 2015, at the Annual General Meeting of the European Federation of Insurance Intermediaries in Brussels.

Mr Bernardino talks about several key topics for EIOPA, including:

- ▣ Progress on the Insurance Distribution Directive (“**IDD**”). He states that insurance intermediaries play a key role in selling insurance products to consumers, essentially, the main interface in the market and therefore their conduct needs to appropriately match the interests and needs of the customers. He addresses the areas that EIOPA feel are fundamental in the revised IDD, such as, conflicts of interest that arise when distributors sell insurance products, the need for a standardised Product Information Document (“**PID**”) for non-investment based insurance products and the provision for continuous professional development (“**CPD**”);
- ▣ The current work on the Key Information Documents (“**KID**”) for Packages Retail and Insurance-based Investment Products (“**PRIPs**”) in order to enhance product disclosure for consumers, by reducing complexity and enhancing comparability. He states that the central focus of the PRIIPS Regulation is product disclosure: establishing new rules, consumer-friendly and comparable KIDs as well as product intervention powers in relation to insurance-based investment products. Mr Bernardino states that some of the key tools to be implemented will consist of Thematic Reviews of market conduct, Retail Risk Indicators, deep and effective market monitoring both for general and product intervention purposes and Consumer Trend Reports; and

- EIOPA's vision on Conduct of Business Supervision. Overall, Mr Bernardino states that there are four main lines of action in which EIOPA are focusing on: strengthening corporate governance; reinforcing the regulation of product oversight and governance and sales incentives; enhancing conduct of risk supervision; and putting in place credible and dissuasive enforcement.

Mr Bernardino concludes his speech with reference to several challenges posed by the digital era and the impact on the entire insurance value chain, from insurers to intermediaries and distributors and service providers. He states however that opportunities may also arise through these challenges including the growing use of big data and templates, comparison websites and automated advice tools.

The speech is available in full via the following link:

<https://eiopa.europa.eu/Publications/Speeches%20and%20presentations/2015-06-05%20BIPAR%20meeting.pdf>

#### **(ix) EIOPA Annual Report 2014**

On 26 June 2015, EIOPA published its Annual Report 2014 which outlines EIOPA's main deliverables across its goals to strengthen consumer protection, deliver quality and timely regulation, ensure convergence, consistency and quality of supervision, support financial stability and develop as a modern and competent authority.

EIOPA has however experienced some major challenges. The most pressing being the disparity between the tasks and obligations assigned to EIOPA versus the resources it has to undertake these tasks and obligations. The Annual Report 2014 provides information on EIOPA's management of the resources in order to meet its goals.

Gabriel Bernardino, Chairman of EIOPA, stated:

*"In 2014, consumer protection and financial stability continued to guide EIOPA's priorities. Our ultimate goal is to ensure that insurance companies and pension funds are soundly managed, have a robust solvency position and treat policyholders, members and beneficiaries in a transparent and fair manner. In our work we continued to have independent and objective judgment. Our conclusions were based on reliable analysis and solid evidence. We adhered to the transparency and accountability towards our stakeholders".*

The Annual Report 2014 in full is available via the following link:

[https://eiopa.europa.eu/Publications/Reports/EIOPA\\_ANNUAL\\_REPORT\\_2014.pdf](https://eiopa.europa.eu/Publications/Reports/EIOPA_ANNUAL_REPORT_2014.pdf)

(x) **EIOPA overview of equivalence decisions by European Commission**

On 30 June 2015, EIOPA published an overview of equivalence decisions taken by the European Commission on the EIOPA website.

The European Commission states that it may decide about the equivalence of a third country's solvency and prudential regime. Positive equivalence findings are mutually beneficial to EEA (re)insurers and third country (re)insurers. Moreover, equivalence findings promote open international insurance markets, whilst simultaneously ensuring that policy holders are adequately protected globally. The overview outlines three distinct areas for equivalence assessment under Solvency II:

- ▣ **Reinsurance** (Article 172 of the Solvency II Directive): relevant for reinsurers from third countries. If the third country's rules are deemed equivalent, such reinsurers must be treated by EEA supervisors in the same way as the EEA reinsurers. This is also likely to increase the attractiveness for EEA insurers of entering into reinsurance arrangements with reinsurers from third countries.
- ▣ **Solvency calculation** (Article 227 of the Solvency II Directive): relevant for EEA insurers operating in a third country. A positive equivalence finding will allow EEA internationally active insurance groups to use the local rules relating to capital (own funds) and capital requirements rather than the Solvency II rules. This would relieve the related companies in the third country from having to recalculate their data in conformity with the Solvency II requirements.
- ▣ **Group supervision** (Article 260 of the Solvency II Directive): relevant for insurers from third countries with activities in the EEA. If the third country's rules are deemed equivalent in this area, EEA supervisors will under certain conditions rely on the group supervision exercised by a third country. This would free the third country international groups from being subject to the unnecessary burdens arising from dual group supervision.

The overview of each equivalence decision can be found via the following link:

<https://eiopa.europa.eu/external-relations/equivalence/overview-of-equivalence-decisions>

## European Market Infrastructure Regulation (“EMIR”)

### (i) ESMA consults on clearing obligations under EMIR

On 11 May 2015, ESMA published its fourth consultation paper (ESMA/2015/807) on the clearing obligation under EMIR (the Regulation on OTC derivative transactions, CCPs and TRs).

This consultation paper seeks stakeholders’ views on proposed regulatory technical standards (“**RTS**”) on the clearing obligation under EMIR.

The aim of the consultation paper is to seek interested parties views on the RTS that ESMA has to draft and submit to the European Commission.

The input from stakeholders will help ESMA in finalising the relevant technical standards to be drafted and submitted to the European Commission. The consultation process closes on 15 July 2015.

The consultation is available via the following link:

[http://www.esma.europa.eu/system/files/esma-2015-807 -  
\\_consultation\\_paper\\_no\\_4\\_on\\_the\\_clearing\\_obligation\\_irs\\_2.pdf](http://www.esma.europa.eu/system/files/esma-2015-807_-_consultation_paper_no_4_on_the_clearing_obligation_irs_2.pdf)

### (ii) ESMA publishes opinion on the composition of CCP colleges

On 21 May 2015, ESMA published a draft opinion (dated 7 May 2015) on the CCP Colleges to clarify which authorities qualify as a college member under Article 18(2)(c) of EMIR following the establishment of the Single Supervisory Mechanism (the “**SSM**”) and to resulting voting rights.

Under Article 18(2) of EMIR, a CCP college (that is, a college to facilitate the granting or refusal of authorisation of a CCP) should include, among other authorities, the competent authorities responsible for the supervision of the clearing members of the CCP that are established in the three member states with the largest contributions to the CCP's default fund.

Under the SSM Regulation (Regulation 1024/2013), the European Central Bank (“**ECB**”) may take over from national competent authorities (“**NCAs**”) the direct prudential supervision of certain clearing members that are credit institutions.

The opinion clarifies that where the ECB has taken over the direct prudential supervision of any of the clearing members of the CCP that are established in the three Member States with the largest contributions to the default fund of the CCP, it should join the college pursuant to Article 18(2)(c) of EMIR.

The opinion in full is available via the following link:

[http://www.esma.europa.eu/system/files/2015-838\\_esma\\_opinion\\_on\\_the\\_composition\\_of\\_the\\_colleges.pdf](http://www.esma.europa.eu/system/files/2015-838_esma_opinion_on_the_composition_of_the_colleges.pdf)

**(iii) ESMA updates list of authorised CCPs under EMIR**

On 27 March 2015, ESMA published an update to its list of CCPs that are authorised under EMIR as well as its Public Register for the Clearing Obligation under EMIR (“**Public Register**”).

Following this, on 27 April 2015, ESMA recognised ten third country CCPs established in Australia, Hong Kong, Japan and Singapore. The recognition by ESMA allows third country CCPs to provide clearing services to clearing members or trading venues established in the EU.

Those CCPs are established in jurisdictions which have been assessed as equivalent by the European Commission with regard to their legal and supervisory arrangements for CCPs. Several other steps led to the recognition of those third-country CCPs, including the conclusion of cooperation agreements with the relevant third-country authorities, as well as the consultation of certain European competent authorities and central banks, as foreseen by EMIR.

As a result, ESMA has published a list of the recognised third-country CCPs as well as the classes of financial instruments covered by the recognition of the following CCPs: ASX Clear (Futures) Pty Ltd, ASX Clear Pty Ltd, HKFE Clearing Corporation Limited, Hong Kong Securities Clearing Company Limited, OTC Clearing Hong Kong Limited, SEHK Options Clearing House Limited, Japan Securities Clearing Corporation, Tokyo Financial Exchange Inc, Singapore Exchange Derivatives Clearing Limited and The Central Depository (Pte) Limited.

This list will be updated after each new decision on the recognition of third-country CCPs. The updated lists of CCPs are available via the following links:

[http://www.esma.europa.eu/system/files/ccps\\_authorised\\_under\\_emir.pdf](http://www.esma.europa.eu/system/files/ccps_authorised_under_emir.pdf)

[https://www.esma.europa.eu/system/files/third-country\\_ccps\\_recognised\\_under\\_emir.pdf](https://www.esma.europa.eu/system/files/third-country_ccps_recognised_under_emir.pdf)

The updated Public Register can be found via the following link:

[http://www.esma.europa.eu/system/files/public\\_register\\_for\\_the\\_clearing\\_obligation\\_under\\_emir.pdf](http://www.esma.europa.eu/system/files/public_register_for_the_clearing_obligation_under_emir.pdf)

**(iv) ESMA publishes updated EMIR Q&A**

On 27 April 2015, ESMA issued the thirteenth update of its Q&A document (ESMA/2015/775) on the implementation of EMIR. The update relates to the second level of the EMIR validation specifications to be commonly applied by TRs to ensure that reporting is performed according to the EMIR regime.

The validation specifications involve verifying that the values reported in the fields comply with the format and content rules set out in the technical standards on reporting. It is expected that upon implementation by the TRs, a failure to comply with the requirements will trigger a rejection of the report by the TR. This is a key step for achieving better data quality as a rejected report will indicate which fields are not reported in compliance with EMIR and need to be corrected, which will allow counterparties to improve their reporting to meet the EMIR standards.

The validation controls that TRs will put in place are based on the original rules specified in the EMIR technical standards which were published in December 2012 and entered into force on 12 February 2014. No additional reporting requirements are introduced.

In order to allow sufficient lead time to implement the second level validation, ESMA expects the TRs to be able to implement the validation by end October 2015.

The Q&A is available via the following link:


[http://www.esma.europa.eu/system/files/2015\\_775\\_qa\\_xii\\_on\\_emir\\_implementation\\_april\\_2015.pdf](http://www.esma.europa.eu/system/files/2015_775_qa_xii_on_emir_implementation_april_2015.pdf)

**(v) European Commission Services Consultation on EMIR implementation**

On 21 May 2015, the European Commission's Financial Stability, Financial Services and Capital Markets Union Directorate General (“**DG FISMA**”) published a consultation to enable it to judge market participants' experience in implementing EMIR (the “**Consultation**”).

The European Commission is required under Article 85(1) of EMIR to review and prepare a general report on EMIR for submission to the European Parliament and European Council. It is required to do this by 17 August 2015.

EMIR requires the European Commission in particular to assess:

-  The need for any measure to facilitate the access of CCPs to central bank liquidity facilities;

- ▣ The systemic importance of the transactions of non-financial firms in OTC derivatives, in particular the impact of EMIR on use of derivatives by non- financial firms;
- ▣ The functioning of the supervisory framework for CCPs;
- ▣ The efficiency of margining requirements to limit procyclicality and the need to define additional intervention capacity in this area; and
- ▣ The evolution of CCPs' policies on collateral margining and securing requirements and their adaptation to the specific activities and risk profiles of their users.

The European Commission also published a speech on 29 May 2015 that was delivered by Jonathan Hill, Commissioner of DG FISMA, at a public hearing in relation to the European Commission's review of EMIR implementation. Points of interest in Lord Hill's speech include:

- ▣ Clearing obligations and margin requirements for trades not centrally cleared are still not fully in place. ESMA published its final draft RTS for the central clearing of interest rate swaps ("**IRS**") under EMIR in October 2014. The European Commission has now finalised its discussions with ESMA and is starting the process of getting the first clearing obligations adopted by the European Commission. It has taken some time to refine the rules in co-operation with ESMA, but it has been crucial to get them right as they form the blueprint for the rules that will follow. The timing means that the first clearing rules for certain interest rate products could be in place as soon as April 2016, although a longer phase-in will be provided for different types of counterparties for whom implementation is less straightforward, including a three year delay for nonfinancial end-users.
- ▣ The European Commission will soon put in place the necessary extension of the transitional relief for EU pension funds from central clearing. This will provide a further two years to look at possible solutions to the challenges that pension funds face when clearing. However, the European Commission invites comments as part of the review as to whether that will be sufficient.
- ▣ ESMA is expected to deliver draft requirements on margin for non-cleared trades within the next few months. This has taken longer than expected, but an unprecedented degree of consistency in standards globally has been achieved, which should reduce the risks of regulatory arbitrage. The European Commission expects to track the internationally agreed timetable, beginning in late 2016, but with a staggered phase-in for smaller counterparties.

Lord Hill also considers whether the review will result in an "EMIR II". He comments that this is by no means yet certain, adding that the European Commission is not planning a



change to EMIR's fundamental objectives. However, if the evidence shows that the rules are not proportionate to the risks posed by different types of institution, or if there are ways to improve EMIR so it better meets the objective of financial stability, Lord Hill believes the European Commission should have the confidence to adapt the existing framework.

A related European Commission press release notes that the review will rely largely on feedback received from the consultation. Responses to the consultation are requested by 13 August 2015. An online questionnaire has been provided for this purpose. The public hearing discussion and responses to the consultation will be taken into account and the European Commission will report back later in 2015 on its findings and the next steps. The European Commission will give areas that are yet to come into force, such as clearing, time to bed down, with a view to looking at how they are working in due course.

The Consultation is available in full via the following link:

[http://ec.europa.eu/finance/consultations/2015/emir-revision/docs/consultation-document\\_en.pdf](http://ec.europa.eu/finance/consultations/2015/emir-revision/docs/consultation-document_en.pdf)



In order to submit responses to the Consultation, the online questionnaire is available via the following link:

<https://ec.europa.eu/eusurvey/runner/emir-revision-2015?surveylanguage=en>

**(vi) ISDA market practice guidance for portfolio compression under EMIR**

On 27 May 2015, the International Swaps and Derivatives Association (“ISDA”) published market practice guidance dated 12 May 2015, on the portfolio compressions obligations under EMIR.

The following documents have been produced by ISDA's portfolio compressions working group to assist participants when implementing systems and procedures to meet their portfolio compressions requirements:

-  Step by step overview of the EMIR portfolio compressions requirements; and
-  Product feasibility matrix outlining the products that are considered to be compressible.

ISDA explains that both of the above documents are working documents and will evolve as compression tools continue to advance. The ISDA portfolio compressions working group will review the market guidance twice a year to ensure that it remains current and relevant.

ISDA's documents on EMIR are available via the following link:

<https://www2.isda.org/emir/>

**(vii) ESMA update on derivatives reporting under EMIR**

On 29 May 2015, ESMA published a press release providing an update on the harmonisation of derivative transaction reporting to trade repositories (“**TRs**”) under EMIR.

ESMA has reported that since February 2014, when derivatives reporting began in the EU, the six EU TRs registered with and supervised by ESMA under EMIR have received more than 16 billion submissions, with average weekly submissions over 300 million.

In April 2015, of the 200 million plus new trades that were added:

- ▣ 55% were ETD trades;
- ▣ 31% were OTC; and
- ▣ 14% were listed derivatives traded off exchange.

ESMA has also explained that when TRs started publishing aggregate data after February 2014, the overall aggregation of publicly available data across TRs was problematic due to different data granularity, level of consistency, presentation structure and formats chosen by TRs. ESMA therefore asked for measures to be implemented to improve the quality, harmonisation and access to data aggregates.

From April 2015, harmonised public data has become available from and updated weekly by all TRs. The information available includes: open positions, trade volume and values which are broken down by derivative class, type, trade type (single-sided EEA, single-sided non EEA, or dual-sided). This enables comparison of data across TRs.

The press release in full is available via the following link:

<https://www.esma.europa.eu/news/ESMA-fosters-derivatives-market-transparency?t=326&o=home>

**(viii) ESMA speech on EMIR work**

On 9 June 2015, ESMA published a speech given by Ms Verena Ross, ESMA's Executive Director, on ESMA's work relating to EMIR (the Regulation on OTC derivative transactions, CCPs and TRs).

In her speech, Ms Ross explains that ESMA is very much at the implementation stage of its work on EMIR. With initial work on technical standards complete, ESMA is now working to ensure stringent implementation of this legislation. ESMA expects to submit draft

technical standards (“**DTS**”) to the European Commission after summer 2015, and the revised ESMA standards should become applicable in the second half of 2016. Ms Ross also comments on:

- ▣ ESMA's work on the clearing obligation for derivatives under EMIR. It expects the clearing obligation to be implemented in the EU in the coming months; and
- ▣ The review of EMIR reporting requirements. Ms Ross explains that beyond clarifying and improving the rules, reporting parties need to comply with those currently in force, such as the rules on assigning a mutually agreed code to the report (“**UTI**”). ESMA has agreed with NCA to increase supervision on this important obligation.

The speech in full is accessible via the following link:

[http://www.esma.europa.eu/system/files/2015-921\\_keynote\\_speech\\_at\\_idx\\_2015\\_verena\\_ross\\_9\\_june\\_2015.pdf#](http://www.esma.europa.eu/system/files/2015-921_keynote_speech_at_idx_2015_verena_ross_9_june_2015.pdf#)

**(ix) ESMA proposes including ETDs in CCP interoperability arrangements under EMIR**

On 2 July 2015, ESMA published its final report on ‘*The extension of the scope of interoperability arrangements*’ (the “**Report**”) between EU-based CCPs required under EMIR, recommending that the interoperability provisions should be extended to ETDs.

ESMA was required under Article 85(3)(d) of EMIR to submit to the European Commission a Report on the extension of the scope of interoperability arrangements under Title V of EMIR to transactions in classes of financial instruments other than transferable securities and money-market instruments (which constitute the current scope of EMIR).

In the Report, ESMA explains how the concept of interoperability has emerged in the EU and the general regulatory framework applicable to it under Articles 51 onwards of EMIR and in ESMA's guidelines and recommendations for establishing consistent, efficient and effective assessments of interoperability arrangements. It then provides a description of the current interoperability arrangements between EU CCPs for different product types (that is, EU equities, EU government bonds and EU ETDs). Finally, ESMA examines the reasons for extending the current EMIR framework to derivatives and concludes that its scope should be extended to ETDs, but not yet to OTC derivatives.

The Report is available via the following link:

[http://www.esma.europa.eu/system/files/2015-1067\\_-\\_report\\_on\\_io\\_extension\\_0.pdf](http://www.esma.europa.eu/system/files/2015-1067_-_report_on_io_extension_0.pdf)

## Packaged Retail Investment Products (PRIIP KID Regulation)

### (i) The Joint Committee launches discussion on PRIIPs key information documents

On 23 June 2015, the Joint Committee of the European Supervisory Authorities (the “ESAs”) published a Technical Discussion Paper on risk, performance scenarios and cost disclosures for Key Information Documents (“KIDs”) for packaged retail and insurance-based investment products (“PRIIPs”). The Joint Committee is looking for feedback from all concerned stakeholders by 17 August 2015.

The ESAs are mandated by the Regulation on KIDs for PRIIPs to develop draft RTS on the content and presentation of the KIDs for PRIIPs. The aim of the KIDs is to provide EU retail investors with consumer-friendly information about investment products with the ultimate aim of improving transparency in the investment market. The ESAs issued a first Discussion Paper in November 2014 (JC/DP/2014/02) seeking stakeholders' general views on how these standardised KIDs should be developed.

This Technical Discussion Paper aims to provide stakeholders with an opportunity to comment on certain specific technical areas related to risk, performance and cost information that are required for the RTS to be developed by the ESAs on PRIIPs Regulation

The Technical Discussion Paper aims to collect views on the possible methodologies to determine and display risks, performance and costs in the KID. The paper is split into a section on risk and reward and a section on costs. A number of different methodological options are identified for each element of disclosure.

The discussion paper is available on the websites of the three ESAs: EBA, ESMA and EIOPA. Comments on this discussion paper can be sent using the response form via the ‘Consultations’ section of the ESMA website.

#### *Next steps*

The ESAs expect to follow this Technical Discussion Paper with a final Consultation Paper setting out the draft RTS under Article 8 of the PRIIPs Regulation in Autumn 2015. A separate Consultation Paper will also be published for the draft RTS under Articles 10 and 13.

The draft RTS on Article 8 will then be finalised and submitted to the European Commission by 31 March 2016, as set out in the PRIIPs Regulation.

The consultation document is available via the following link:

[http://www.esma.europa.eu/system/files/jc\\_dp\\_2015\\_01.pdf](http://www.esma.europa.eu/system/files/jc_dp_2015_01.pdf)

The response form is available via the following link:

<http://www.esma.europa.eu/consultation/Joint-Committee-consultation-Key-Information-Document-PRIIPS>

## International Association of Insurance Supervisors (“IAIS”)

### (i) **Insurance Europe speech comments on IAIS development of global insurance standards**

On 2 June 2015, Insurance Europe published a speech by its president, Sergio Balbinot, on global regulatory developments relating to insurance.

Throughout the speech, comments of particular interest talk about future workstreams of the IAIS relating to the development of global insurance standards. Mr Balbinot is dismissive of the workstreams throughout the speech, primarily on the basis that they "start with the assumption that there is a problem to fix and that capital is the solution". In this regard, Mr Balbinot comments on three standards the IAIS intends to develop by the end of 2016:

- ▣ **Basic capital requirement (“BCR”).** The IAIS has developed a BCR, which is aimed at insurers that have been designated as globally systemically-important. Mr Balbinot comments that as the BCR has been developed very quickly, over the course of nine months, it is a "very rough" measure, with very little risk-sensitivity. He suggests that this could create, rather than avoid, pro-cyclical behaviour.
- ▣ **Capital add-ons.** The IAIS work on capital add-ons (that is, the higher loss absorbency requirements) for systemically relevant insurers is still underway. Mr Balbinot comments that it is unclear whether these add-ons will focus on the systemically risky activities only (which he suggests is the correct focus) or be applied for the entirety of the insurance company's business.
- ▣ **General international capital standard (“ICS”).** The IAIS is developing a more general ICS, applicable to internationally active insurance groups. Mr Balbinot states that while the IAIS remains committed to its timetable of finalising the ICS by 2016, it is now saying that this will be "ICS version 1.0", which will be refined over coming years. This could, therefore, give rise to further challenges for the insurance industry in light of the ongoing implementation of the Solvency II Directive. Mr Balbinot also comments on the "significant concern" that the shift of focus to developing ICSs will slow down progress on areas that the insurance industry believes are most important in preventing future problems. He suggests that the focus of policymakers should instead be on high-quality group risk management and full supervisory coverage

through lead supervision and co-ordinated supervisory colleges under a common framework.

The speech in full is available via the following link:

<http://www.insuranceeurope.eu/uploads/ModuleXtender/Eventsmanager/149/SergioBalbinotconferenceopeningspeech2015.pdf>

## (ii) Consultation on Revision of Insurance Core Principles

On 17 June 2015, the IAIS published a consultation paper proposing the revision of the following insurance core principles:

- ▣ ICP 4 Licensing;
- ▣ ICP 5 Suitability of Persons;
- ▣ ICP 7 Corporate Governance;
- ▣ ICP 8 Risk Management and Internal Controls;
- ▣ ICP 23 Group-wide Supervision; and
- ▣ ICP 25 Supervisory Cooperation and Coordination

The IAIS is also proposing revision to several key glossary definitions to be reflected as follows in Paragraph 13 of the Introduction:

*"For the purpose of these ICPs, the term "insurer" means insurance legal entities, insurance groups and insurance-led financial conglomerates".*

The decision to include groups in the term "insurer" has formed the basis for the drafting of the ICP revisions. Another proposal for revision is the term "legal entities" which includes branches of such legal entities, in order to avoid confusion about the status of branches within the ICPs and avoid additional drafting in respect of branches in the future.

Several other definitions have been introduced reflecting recent developments related to governance and risk management, group supervision and application at the head of the group. Definitions have also been aligned with definitions of other standard setting bodies for consistency.

ICPs 4, 5, 7 and 8 are being revised following the Self-Assessment and Peer Review ("SAPR") in 2014 of these ICPs, which found that there were areas where clarifications to these ICPs would help jurisdictions improve observance. The IAIS is addressing the

findings from the SAPR report in relevant standards and guidance. The revisions to these ICPs also take into consideration the revisions to ICP 23 which revealed a need to strengthen supervisory approaches to group-wide supervision and whilst also strengthening requirements on the Head of the Group in other ICPs. The amendments necessary with respect to group-wide supervision are forming part of the overall proposals for revision of these ICPs. ICP 7 and 8 have also been amended to ensure alignment with corresponding principles, standards or guidance from the Financial Stability Board and the Basel Committee on Banking Supervision, including the need to enhance the responsibilities of the insurers' Boards with respect to the external auditors following from BCBS guidelines on external audits of banks adopted in March 2014.

Following input from members and stakeholders during an informal consultation in May 2015, the IAIS has refined the drafting proposals accordingly and have made these available on the IAIS website. The deadline for feedback on the draft proposals is 17 August 2015. A public discussion of the comments and proposed resolutions is due to be organised in early October.

The draft proposals are available via the following link;

<http://iaisweb.org/index.cfm?event=getPage&nodeId=50512>

### (iii) **Consultation on Draft Issues on Conduct of Business in Inclusive Insurance**

On 22 June 2015, the IAIS published a consultation paper on draft issues on conduct of business in inclusive insurance as part of its work plan included in the Roadmap 2013-14 and 2014-15 of the Financial Inclusion Working Group (“**FIWG**”). The decision to develop this paper followed the recognition that in inclusive insurance the fair treatment of customers is very important as the customers in these markets are particularly vulnerable.

The consultation paper intends to provide an overview of several issues in respect of conduct of business in inclusive insurance markets that affect the extent to which customers are treated fairly, both before a contract is entered into and through to the point at which all obligations under a contract have been satisfied. The objective of the consultation paper is to promote the understanding of these issues among regulators and supervisors and other organisations and parties with an interest in this area which in turn can inform further initiatives to address these issues in the area of conduct of business.

The draft was prepared by a drafting group of the FIWG in which various stakeholders are represented including the Micro Insurance Network (“**MIN**”), the Access to Insurance Initiative (“**A2ii**”) and the Centre for Financial Regulation and Inclusion (“**Cenfri**”). The deadline for feedback on this draft paper is 6 August 2015.










The draft paper can be found via the following link:

<http://iaisweb.org/index.cfm?event=getPage&nodeId=50188>

**(iv) IAIS concludes its 8<sup>th</sup> Global Seminar, Stakeholder Dialogues**

On 24 June 2015, the IAIS published an overview of the discussion focused on for the 8th Global IAIS Seminar (the “**Seminar**”) which gathered more than 200 Members and stakeholders for two days of dialogue and presentations. The Seminar was for the first time open to the public and included the option to participate via conference call.

The Seminar affords insurance supervisors and stakeholders a unique opportunity to discuss globally significant matters currently impacting the insurance sector and gain knowledge on current and planned IAIS activities. This year’s programme included dialogues on major IAIS activities such as Insurance Core Principle (“**ICP**”) revisions, ComFrame, the development of capital standards, implementing IAIS supervisory material, financial stability and disaster risk. The Seminar consisted of dialogues and presentations were given and questions taken on the following topics:

-  IAIS high level goals and future outlook;
-  IAIS’ new policies and procedures for stakeholder engagement;
-  Executive Committee dialogue;
-  Dialogue on work of the Implementation Committee;
-  Dialogue on the ICPs;
-  Dialogue on work of the Financial Stability Committee;
-  Dialogue on work of the Technical Committee;
-  Dialogue on work on global capital standards; and
-  Disaster risk.

Copies of the presentations delivered during the Global Seminar and Stakeholder Dialogues are available on the Stakeholder Meeting section of the IAIS website.



The overview of the Seminar in full is available via the following link:

<http://iaisweb.org/index.cfm?event=showNewsDetails&nodeID=52784&moduleContentid=38953>

## Market Abuse

### (i) **Benchmark Regulation Update**

On 2 April 2015, the European Parliament updated its procedure file on the proposed Regulation on indices used as benchmarks in financial instruments and financial contracts ("**Benchmark Regulation**"), to indicate that the European Parliament's Committee on Economic and Monetary Affairs ("**ECON**") report on Benchmark Regulation would be discussed on a plenary session on 10 April, 2015.

ECON's report on the plenary session held on 10 April 2015 was published on 7 May 2015. The full report is available via the following link:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8-2015-0131+0+DOC+PDF+V0//EN>

Furthermore, in accordance with the updated procedure file, the Benchmark Regulation was due for further consideration by the European Parliament during its plenary sessions to be held from 18 and 19 May 2015, despite the previous indications that the proposed Regulation would not be considered until a plenary session to be held from 7 to the 10 of September 2015.

The European Parliament has agreed a negotiating mandate for the Benchmark Regulation and cleared the way for negotiations with the European Council and the European Commission. If political agreement is reached as a result of these negotiations, the European Parliament will endorse the agreed position at a future plenary session.

The European Council must formally approve the draft Benchmark Regulation before it comes into force. Once the Benchmark Regulation enters into force, there will be a 12 month transitional period for the majority of its provisions.

### (ii) **Delay announced for the delivery of draft technical standards under the Market Abuse Regulation**

On 13 May 2015, ESMA published its correspondence with the European Commission outlining the agreed extension to the deadline for the submission of final DTS (originally due in July 2015) under the MAR.

The agreed extension to the end of September 2015, is a result of the European Commission conducting an early legal review of DTS. This review will evaluate the legality and legislative consistency of technical standards under a number of European Directives including UCITS V, the Transparency Directive, the Central Securities Depository Regulation (“**CDSR**”), MiFID II and MAR.

ESMA’s letter is available via the following link:

[http://ec.europa.eu/finance/general-policy/docs/level-2-measures/2015-05-11-lettermaijsoorfaull\\_en.pdf](http://ec.europa.eu/finance/general-policy/docs/level-2-measures/2015-05-11-lettermaijsoorfaull_en.pdf)

The European Commission’s letter is available via the following link:

[http://ec.europa.eu/finance/general-policy/docs/level-2-measures/2015-05-11-letter-faull-maijsoor\\_en.pdf](http://ec.europa.eu/finance/general-policy/docs/level-2-measures/2015-05-11-letter-faull-maijsoor_en.pdf).

## Prospectus Directive

### (i) Responses to the Review of the Prospectus Directive Consultation Paper

Responses to the consultation paper on the review of the Prospective Directive were published on 10 June 2015 by the European Commission.

The purpose of the consultation was to gather views on the functioning of the Prospectus Directive and associated implementing legislation. The consultation covered a broad range of issues, including, the scope of the prospectus requirement and the exemptions, the appropriate level of investor protection, possible ways to reduce administrative burden and costs that seem unnecessary, cross-border issues and the possibility to make the regime more appropriate for SMEs and companies with reduced market capitalisation.

The 181 responses to the directive are available via the flowing link:

<https://ec.europa.eu/eusurvey/publication/prospectus-directive-2015?language=en>

## Pensions Update

### (i) Pensions Authority- Annual Review 2014 & 2015 – Forward Look Report

On 20 April 2015, the Pensions Authority (the “**Authority**”) published its Annual Review of 2014, giving an overview of activities for 2014 and an insight into 2015. Some of the main points from the published report stated that:

On 31 December 2014, there were 733,027 members in 62,195 schemes – the number of active members of occupational pension schemes reduced by 3,936 during 2014. There was an increase of 21,944 in DC scheme membership and a decrease in DB scheme membership of 27,334. The number of personal retirement savings account contracts increased by 10,713 to 226,605. 30 prosecution cases were concluded, with the Authority securing convictions in 19 cases. Defendants received the benefit of the Probation Act in five other cases and a further six cases were struck out due to payment of arrears.

75 new investigations were opened into various alleged breaches of the Pensions Act 1990 which varied from deduction and non-remittance of pension contributions to failure to reply to a statutory request for information. The Authority carried out 13 onsite inspections of Registered Administrators (“RAs”). 285 schemes were audited for compliance with a particular legislative requirement such as disclosure requirements including provision of leaving service options among other things. 14 schemes and their respective trustees underwent a comprehensive review by the Authority of the stewardship and administration of their schemes. 60% of defined benefit schemes (not in wind-up) were in compliance with the funding standard as at 31 December 2014. All bar 30 of the remainder have agreed funding proposals designed to bring the scheme into compliance with the standard.

The Chairwoman of the Authority, Jane Williams, commented on the challenges in underpinning the Authority’s objective of adequate and predictable pensions, and stated that *“the objective of our proposals will be to make pension schemes more member-centred by introducing higher standards for scheme trustees, greater oversight of how schemes are run and overall a simpler pensions landscape, ultimately significantly reducing the number of DC schemes.”*

In addition the Chairwoman confirmed: *“The Authority has begun work with the Universal Retirement Savings Working Group which was set-up by the Tánaiste, Joan Burton, T.D., to develop a roadmap and timeline for the introduction of a new supplementary workplace retirement saving scheme. The Authority will also continue to work with the Department of Social Protection and Revenue to identify simplifications that can be introduced to pension rules to make them easier to understand and to remove duplications and anomalies.”*

The Annual Review 2014 and 2015 forward look report, is accessible via the following link:

[http://www.pensionsauthority.ie/en/News\\_Press/News\\_Press\\_Archive/Annual\\_Review\\_2014\\_and\\_2015\\_forward\\_look\\_report.pdf](http://www.pensionsauthority.ie/en/News_Press/News_Press_Archive/Annual_Review_2014_and_2015_forward_look_report.pdf)

(ii) **Commission Delegated Regulation of the European Parliament and of the Council as regards the extension of the transitional periods related to pension scheme arrangements**

On 5 June 2015, the European Commission published a draft Delegated Regulation which proposes to give pension scheme arrangements a further two-year reprieve from the central clearing obligation set out in EMIR.

The European Commission is essentially proposing that the current three year exemption for pension scheme arrangements from the central clearing obligation should be extended until 16 August 2017. While the current proposal is to extend the exemption by a further two year period, the European Commission has the power to extend the exemption by a further one year period should the need arise.

The European Parliament and the Council currently have three months to consider the proposed Delegated Regulation, which either enter into force if no objection is made during the three month period or if, before its expiry, those institutions notify the Commission that they will not object. As the existing exemption is due to expire on 16 August 2015, prior to the end of the three month period, it is hoped that the Parliament and the Council will notify the European Commission that they do not object to the proposed Delegated Regulation in advance of this deadline. This is due to the fact that “[a] later entry into force could lead to legal uncertainty for [pension scheme arrangements] as to whether they need to begin preparing for the upcoming clearing obligation” – European Commission.

The proposed Delegated Regulation is available via the following link:

<http://ec.europa.eu/transparency/regdoc/rep/3/2015/EN/3-2015-3680-EN-F1-1.PDF>

## Fitness and Probity

(i) **PCF Return Updates**

In order to correctly capture the details of individuals who have been appointed to the new Pre-Approved Control Functions (“**PCF**”), as outlined in S.I. No394 of 2014 (the “**Amending Regulation**”), a regulatory return report has been added to the Central Bank’s Online Reporting System (“**ONR**”). This return was made available via the ONR on Thursday, 28 May 2015 and the deadline for submission was the 30 June 2015.

As the submitted data will be used to update the Central Bank’s internal systems, late submissions are not being accepted.

This return only applies to the six new Pre Approved Control Functions outlined below and only applies to those six PCF's that were in situ on 31 December 2014:

- ▣ The office of **Chief Operating Officer (PCF-42)** for all regulated financial service providers;
- ▣ **Head of Claims (PCF-43)** for Insurance Undertakings;
- ▣ **Signing Actuary (PCF-44)** for Non-Life Insurance Undertakings and Reinsurance Undertakings;
- ▣ **Head of Client Asset Oversight (PCF-45)** for Investment Firms;
- ▣ **Head of Investor Money Oversight (PCF-46)** for Fund Service Providers;
- ▣ **Head of Credit (PCF-47)** for Retail Credit Firms.

The Central Banks's Guidance is available via the following link:

<http://www.centralbank.ie/regulation/processes/fandp/serviceproviders/Documents/Guidance%20on%20Fitness%20and%20Probity%20Amendment%202014.pdf>

## Central Bank of Ireland

### (i) Central Bank Annual Report

On 30 April 2015, the Central Bank published its Annual Report for 2014 (the "**Report**"). It documents the Central Bank's key activities and developments for 2014.

The Report discusses the continuing progress displayed by Irish economy and more specifically the banking sector since emerging from the EU-International Monetary Fund Programme at the end of 2013. The Report notes the gradual improvements in the balance sheets of banks and their customers.

The Report also outlines the introduction of the SSM, that came into force in November 2014. The SSM resulted in the transferal of the final responsibility for the prudential supervision of the main Irish banks to a new institutional arrangement within the euro area. The Central Bank's support and participation in the SSM was also noted. In preparation for the introduction of the SSM, the Irish banks participated in a comprehensive Eurosystem risk assessment carried out by the Bank. In response to this major change in

the approach to supervision in Europe, the Bank's resources for the supervision of banks were extensively re-organised during 2014.

The Annual Performance Statement (the “**Statement**”) outlines how the focus of the Central Bank was on the supervision of mortgage arrears and distressed SME loans on banks' balance sheets. The Statement also reports on the progress being made on the management of these issues during the year.

The Central Bank also reviewed its AML/CFT supervisory strategy in 2014. The Report also outlines the Central Bank's Performance Plan for 2015, including its plans to continue conducting AML inspections in 2015.

Finally, the Central Bank reports on its financial profit of €2.1 billion for 2014, resulting in €1.7 billion being paid to the Exchequer from the Central Bank's retained earnings.

The Report is available via the following link:

<http://www.centralbank.ie/publications/Documents/Central%20Bank%20of%20Ireland%20Annual%20Report%202014.pdf>

**(ii) Central Bank Quarterly Bulletin for Q2 2015**

On 1 April 2015, the Central Bank published quarterly results and forecasts for the Irish economy as at Q2 2015. In its report the Central Bank predicts that the strengthened growth seen in the Irish economy will continue, due to the improving labour market and increasing disposable incomes providing greater support to consumer and investment spending in 2015 and 2016.

The full bulletin is available via the following link:

<http://www.centralbank.ie/publications/Documents/Quarterly%20Bulletin%20No.%202%202015.pdf>

**(iii) Central Bank feedback on reporting templates**

On 23 April 2015, the Central Bank published a feedback statement on its recent consultation on national specific templates (“**NSTs**”) for reporting under Solvency II. Key changes to be reflected in the NSTs as a result of responses received by the Central Bank include that:

- (a) Reinsurers will not be in scope for the templates;
- (b) Non-life NSTs 3 - 7 will be collected twice per annum (rather than quarterly);

- (c) NSTs 1 – 7 will only apply to High impact insurers; and
- (d) NSTs 8 – 11 (variable annuity business) will allow use of own (rather than Solvency II) hedging bases. The Central Bank intends to issue the revised NSTs by the end of May 2015.

The feedback statement is available via the following link:

<http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP89%20Consultation%20on%20National%20Specific%20Templates%20for%20Insurers%20and%20Reinsurers%20under%20Solvency%20II/Feedback%20Statement%20on%20CP89.pdf>

#### (iv) **Central Bank Settlement Agreements**

On 21 May 2015, the Central Bank released a publication outlining details of the first ever settlement agreement with the Central Bank that resulted in a monetary fine being imposed against an individual. The fine was imposed as a result of misrepresentation by the ‘Head of Finance and Compliance’ of a firm’s true regulatory capital position.

Although the fine of €105,000 imposed will not be paid as the individual in question is bankrupt, both the amount of the fine and the length of the disqualification period of 10 years imposed are indicative of the seriousness that breaches of regulations are viewed by the Central Bank.

Details of the full settlement agreement are available via the following link:

<http://www.centralbank.ie/press-area/press-releases/Pages/SettlementAgreementbetweentheCentralBankofIrelandandMrTadhgGunnell.aspx>

## Anti-Money Laundering/Counter-Terrorist Financing

#### (i) **MLD4 published in the Official Journal**

On 5 June 2015, the Fourth Money Laundering Directive (Directive (EU) 2015/849) (“**MLD4**”) was published in the Official Journal of the EU. MLD4 extends and replaces the Third Money Laundering Directive (“**MLD3**”), which is the existing EU AML and counter terrorist financing (“**CTF**”) regime.

Member States are obliged to transpose MLD4 into national law by 26 June 2017.

Background

The introduction of MLD4 is largely driven by revisions to the FATF Recommendations which were adopted in February 2012 in order to address emerging AML and CTF concerns. The European Commission also published a report in 2012, which reviewed MLD3.

Consequently, the first draft of MLD4 was published in February 2013 and political agreement was reached at the end of 2014. MLD4 was published in the Official Journal following adoption by the European Council in April 2015 and by the European Parliament in May 2015. MLD4 is designed to strengthen the EU's defences against money laundering and terrorist financing.

Some of the important aspects of MLD4 include:

- ▣ the risk-based approach;
- ▣ politically exposed persons (“PEPs”);
- ▣ beneficial ownership;
- ▣ reliance on third parties; and
- ▣ the scope of customer due diligence requirements;
- ▣ enforcement.

#### *Next Steps*

MLD4 provides that the ESAs, through their Joint Committee must publish guidelines on the risks of money laundering and terrorist financing affecting the EU financial sector. MLD4 also makes provision for the publication of delegated acts and technical standards by the European Commission. As outlined above, Member States must bring into force the laws, regulations and administrative provisions to comply with MLD4 by 26 June 2017. It should also be borne in mind that Member States may impose more stringent obligations than those outlined in the directive itself. Firms must now start preparing for compliance with the new rules and will need to consider the effect that MLD4 may have on their business.

Dillon Eustace has published an article on MLD4 which is available via the following link:

[http://www.dilloneustace.ie/download/1/Publications/Regulatory%20and%20Compliance/CClient%20Briefing\\_%20Fourth%20Money%20Laundering%20Directive%20IV.pdf](http://www.dilloneustace.ie/download/1/Publications/Regulatory%20and%20Compliance/Client%20Briefing_%20Fourth%20Money%20Laundering%20Directive%20IV.pdf)

#### **(ii) Central Bank Settlement Agreement for breaches of AML regulations**

In order for the Central Bank of Ireland (the “**Central Bank**”) to ensure on-going compliance with the statutory obligations imposed on designated persons since the introduction of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (the “**2010 Act**”) and its amendment by the Criminal Justice Act 2013 (the “**2013 Act**”)



(together the “**Act**”), the Central Bank commenced themed AML/CTF inspections during the summer of 2014.

Although both the number and level of fines imposed as a result of breaches were minimal, the latest settlement agreement announced on 19 May 2015, resulted in a fine of €1.75 million being imposed on a money remittance service provider.

This fine, along with AML/CTF’s recurring appearance on the Central Bank’s annual Enforcement Priorities, are indicative of the gravity to which the Central Bank views AML and CTF compliance.

The Central Bank’s Enforcement Priorities for 2015 are available via the following link:

<http://www.centralbank.ie/press-area/press-releases/Pages/CentralBankpublishesenforcementprioritiesfor2015.aspx>

Although the unusually high settlement agreement against the service provider could be attributed to a deterrence mechanism and the risks inherent in a business of that size and nature, the investigation highlighted four key deficient areas that resulted in an increased fine being imposed:

- ❑ Policies and procedures in relation to AML/CTF ;
- ❑ Systems for monitoring and identifying suspicious activity;
- ❑ Customer due diligence record retention; and
- ❑ Staff Induction and training.

The importance of ensuring the proper implementation of AML/CTF and strict adherence to these particular categories should not be overlooked.

Details of the settlement agreement are available via the following link:

<http://www.centralbank.ie/press-area/press-releases/Pages/SettlementAgreementbetweentheCentralBankandWesternUnionPaymentServicesIrelandLimited.aspx>

**(iii) New ESMA Q&A on AML and CTF risks associated with investment-based crowdfunding**

On 1 July 2015, ESMA published a set of *questions and answers* (“Q&A”) to promote the sound, effective and consistent application of EU rules on AML and CTF to crowdfunding.

ESMA has been carrying out a programme of work on crowdfunding. In December 2014, it published an opinion and advice to clarify existing EU rules applicable to crowdfunding and identify regulatory gaps. In the course of its work, ESMA identified a need to clarify the extent of the risks involved in investment-based crowdfunding relating to the potential for money laundering and terrorist financing. The Q&A provides responses to questions raised by NCAs and draw on expert input from the Joint Committee's AML sub-committee.

The Q&A are aimed at NCAs to support them in delivering common supervisory approaches and practices in this area, taking into account the characteristics of, and risks associated with, different aspects of crowdfunding. However, ESMA considers the Q&A will also help market participants by providing clarity on the issues involved.

ESMA does not expect to produce any further Q&A on this topic, but it will consider, as appropriate, whether any aspects of the Q&A should be revised in the light of new legislation (for example, the Fourth Money Laundering Directive) or significant developments in the crowdfunding market.

The updated Q&A is available via the following link:

[http://www.esma.europa.eu/system/files/esma\\_2015\\_1005\\_qa\\_crowdfunding\\_money\\_laundering\\_and\\_terrorist\\_financing.pdf](http://www.esma.europa.eu/system/files/esma_2015_1005_qa_crowdfunding_money_laundering_and_terrorist_financing.pdf)

## Data Protection

**(i) General approach reached on the European Commission proposal on the Data Protection Regulation**

On 15 June 2015, Ministers in the Justice Council reached a general approach on the European Commission proposal on the Data Protection Regulation. The shared ambition is to reach a final agreement by the end of 2015.

The aim of the data protection reform launched by the European Commission in 2012 is to enable people to better control their personal data. At the same time modernised rules will

allow businesses to make the most of the opportunities of the Digital Single Market by cutting red tape and benefiting from reinforced consumer trust. A more rigorous and coherent data protection framework will provide for greater legal and practical certainty for citizens, businesses and public authorities.

The general approach on the Data Protection Regulation includes agreement on:

- ▣ *One continent, one law:* the Data Protection Regulation will establish a single set of rules on data protection, valid across the EU. Companies will deal with one law, not 28. It is anticipated that this change will save businesses around €2.3 billion a year. In addition, the new rules will particularly benefit small and medium-sized enterprises (“**SMEs**”), reducing red tape for them. Unnecessary administrative requirements, such as notification requirements for companies, will be removed. It is anticipated that this measure alone will save them €130 million per year;
- ▣ *Strengthened and additional rights:* the right to be forgotten will be reinforced. When citizens no longer want their data to be processed and there are no legitimate grounds for retaining it, controllers will be required to delete the data, unless they can show that it is still needed or relevant. Citizens will also be better informed if their data is hacked. A new proposed right to data portability will make it easier for users to transfer personal data between service providers;
- ▣ *European rules on European soil:* companies based outside of Europe will have to apply the same rules when offering services in the EU;
- ▣ *More powers for independent national data protection authorities:* those authorities will be strengthened in order to effectively enforce the data protection rules, and will be empowered to fine companies that violate EU data protection rules;
- ▣ *The 'one-stop shop':* the rules will establish a 'one-stop shop' for businesses and citizens: companies will only have to deal with one single supervisory authority, not 28, making it simpler and cheaper for companies to do business across the EU. Individuals will only have to deal with their home national data protection authority, in their own language - even if their personal data is processed outside their home country.

The associated press releases can be accessed via the following link:

[http://europa.eu/rapid/press-release\\_IP-15-5176\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5176_en.htm)

[http://europa.eu/rapid/press-release\\_MEMO-15-5170\\_en.htm](http://europa.eu/rapid/press-release_MEMO-15-5170_en.htm)

**(ii) Data Protection Commission Investigates Enforced Subject Access Requests**

More than 40 of Ireland's biggest organisations, across a variety of sectors, have been contacted by the Data Protection Commissioner (the "DPC") in order to assess whether they are in compliance with obligations surrounding 'Enforced Subject Access Requests'. The organisations concerned were selected at random.

'Enforced Subject Data Requests' involve a situation whereby an individual is required to make a data access request and deliver the information provided under such a request to a potential employer. Enforced Subject Data Requests became an offence under data protection legislation in July of last year.

The DPC has outlined that it intends to "*vigorously pursue and prosecute any abuse detected*". The companies contacted were given three weeks to respond to the DPC and it is intended that follow-up inspections will be carried out by the DPC on this matter.





## The Joint Committee (ESMA, EIOPA, EBA)

**(i) ESA's Joint Committee report on cross-sector risk facing EU financial systems**

On 5 May 2015, the Joint Committee of ESAs published its fifth bi-annual report detailing the 'Risks and Vulnerabilities in the EU Financial System' (the "Report").

Although the Report found that the risks affecting the EU financial system remain broadly unchanged in substance since the last report in August 2014, ESAs noted that some risks have further intensified.

The major risks include:

-  Low growth, low inflation, volatile asset prices and their consequences for financial entities;
-  Search for yield behaviour exacerbated by potential rebounds;
-  Deterioration in the conduct of business; and
-  Increased concern about IT risks and cyber-attacks.

In spite of these intensified risks, the report noted that there has been improved stability and confidence in the financial system as a result of a range of different policy and regulatory initiatives are contributing to and

The full report is available via the following link:

<http://www.eba.europa.eu/documents/10180/534414/JC+2014+18+%28Report+on+risks+and+vulnerabilities+in+the+EU+financial+system+spring+2014%29.docx.pdf>

## **(ii) Highlights from Consumer Protection Day 2015**

On 3 June 2015, the Joint Committee of the ESAs held its third Joint ESA Consumer Protection Day in Frankfurt. The event attracted over 300 consumer representatives, academics, legal and financial consultants, national supervisors, experts from the EU institutions and financial services industry (banking, securities, insurance and pensions).

Key topics addressed included conduct risk, digitalisation of financial services and challenges for the next decade in banking, securities, insurance and pensions.

On 5 June 2015, the EBA published a document outlining the highlights from the joint ESAs Consumer Protection Day. This document can be accessed via the following link:

<http://www.eba.europa.eu/documents/10180/1100425/Highlights+from+the+2015+Joint+Consumer+Day.pdf>

## **(iii) Financial Regulatory Developments**

On 4 June 2015, AIMA responded to the EBA's consultation paper on guidelines on sound remuneration practices under CRD4 (the "**Guidelines**"). AIMA outlines several concerns in respect of the Guidelines in its response, as follows:

- ▣ Proportionality: AIMA outlines that the EBA's interpretation of the proportionality principle could have serious negative implications for AIMA members and that it should allow firms to neutralise certain provisions of the remuneration principles where proportionate to do so;
- ▣ Scope: In respect of the EBA's proposal to apply the Guidelines to staff of delegate entities of a CRD4 group company AIMA outlines that CRD4 does not mention any requirements applying to staff outside the group; and

- Unintended Tax and Regulatory Impacts: AIMA discusses the possible tax consequences of the Guidelines on limited liability partnerships or limited partnerships if dividends paid to a CRD4 group company's shareholders or profit allocations to partners or members of partnerships are considered remuneration where those individuals are otherwise "identified staff" as well. In AIMA's opinion these payments are not remuneration but it envisages disproportionate tax consequences if they are treated as such.

AIMA's response can be accessed via the following link:

[http://www.aima.org/objects\\_store/eba\\_guidelines\\_on\\_sound\\_remuneration\\_policies\\_under\\_crd\\_iv\\_-\\_response\\_to\\_consultation.pdf](http://www.aima.org/objects_store/eba_guidelines_on_sound_remuneration_policies_under_crd_iv_-_response_to_consultation.pdf)

## Insurance Europe

### (i) Insurance Europe responds to European securitisation consultant

On 13 May 2015, Insurance Europe responded to a European Commission consultation on an EU framework for simple, transparent and standardised securitisation.

The consultation represents a first step towards a possible initiative to create an EU framework for simple, transparent and standardised securitisation. Its aim is to gather information and views from stakeholders on the current functioning of EU securitisation markets and how the EU legal framework can be improved to create a sustainable market for high-quality securitisation. On the basis of the feedback received, the European Commission will reflect further on how to reach that objective.

In its response, Insurance Europe stated that it supports the use of good securitisations to help fund the European economy. It also indicated that enhanced standardisation, transparency and quality of securitisations will support insurers' access and interest in this asset class. While acknowledging that development and compliance with such provisions could take time, Insurance Europe warned that this must not be used as an excuse to delay the immediate review of the current prudential treatment of securitisations which, as it stands, is inappropriate.

Insurance Europe said that, in the short-term, a number of improvements in the Solvency II approach for qualifying securitisations are needed.

The European Commission Consultation and Insurance Europe's response in full are available via the following links:

[http://ec.europa.eu/finance/consultations/2015/securitisation/docs/consultation-document\\_en.pdf](http://ec.europa.eu/finance/consultations/2015/securitisation/docs/consultation-document_en.pdf)

<http://www.insuranceeurope.eu/uploads/Modules/Newsroom/eco-lti-15-062.pdf>

## Financial Services Ombudsman

### (i) Ger Deering Appointed as Financial Services Ombudsman (“FSO”)

On 20 April 2015, Ger Deering took up his appointment as the Financial Services Ombudsman (“FSO”) and will subsequently oversee the integration of the offices of the FSO and the Pensions Ombudsman (“PO”) when the necessary legislation is enacted. Mr Deering is replacing Bill Prasifka who has completed a 5-year term in the role.

## Reinsurance

### (i) Council of EU Mandate to negotiate agreement with US on Reinsurance

On 21 April 2015, the Council of the EU published a press release announcing that it had issued a mandate to the European Commission to negotiate an agreement with the United States on reinsurance.

The European Commission will negotiate on behalf of the EU, in consultation with a Council committee. The agreement will be concluded by the Council with the consent of the European Parliament.

Janis Reirs, Council president, stated that the agreement with the United States would greatly facilitate trade in reinsurance and related activities, and enable the United States and EU to recognise each other’s prudential rules and help supervisors exchange information.

### (ii) The Central Bank publishes recent (re)insurance sector speeches

On 13 May 2015, the Central Bank published a speech by Cyril Roux, Deputy Governor of the CBI, given at the PWC Annual CEO Insurance Dinner.

In his speech, directed at the reinsurance and cross-border life sectors, Mr. Roux acknowledged the overall satisfaction of the Central Bank with engagement by (re)insurers. He highlighted that focus on current market risks and changes and

compliance with anti-money laundering legislation are important areas for (re)insurers' attention.

On 14 May 2015, the Central Bank also published the text of a speech given by the Director of Insurance Supervision, Sylvia Cronin, at the recent European Insurance Forum. In addressing 'the Changing Landscape of Global Regulation', Ms. Cronin spoke about new regulatory initiatives, including Solvency II, the development of Global Capital Standards and conduct regulation. Notably, Ms. Cronin emphasised that the Central Bank has identified that firms have a lot of work yet to undertake in relation to the 'Own Risk and Solvency Assessment' ("**ORSA**") which she identified as a critical component to the success of Solvency II.

Both speeches in full are accessible via the following links:

<http://www.centralbank.ie/press-area/speeches/Pages/AddressbyCyrilRouxDeputyGovernortoPWCAAnnualCEOInsuredinner.aspx>

<http://www.centralbank.ie/press-area/speeches/Pages/AddressbyDirectorofInsuranceSylviaCroninatDIMAConferenceon14May2015.aspx>

## Companies Act 2014

### (i) Introduction

The Companies Act 2014 ("**CA 2014**") commenced on 1 June 2015 and the previous Companies Act 1936-2013 has been almost entirely repealed save a number of limited exceptions.

CA 2014 significantly reforms Ireland's company law regime by consolidating, reforming and amending all existing pieces of company legislation. It impacts every Irish company and has implications for all directors and shareholders. Please see our website (<http://www.dilloneustace.ie/publications>) for various Dillon Eustace updates on the key elements of CA 2014.

The CA 2014 deals with all types of companies within the one piece of legislation, including two types of private company limited by shares (see further below); a private company limited by guarantee; an unlimited company; several types of public limited and unlimited companies; as well as the Societas Europea.



**(ii) New Forms of Company**

CA 2014 provides for several new types of company. These include a designated activity company (“**DAC**”), a company limited by shares (“**LTD**”), a public limited company/ *societas europaea*, an unlimited company, a guarantee company, an unregistered company and an investment company.

Private companies limited by shares will be required to make a decision as to which of the following types of company it wishes to be under CA 2014:



- (a) registered under Part 2, of the CA 2014, and given the designation of “limited” or “LTD”;
- (b) registered under Part 16, in which case it will be referred to as a “designated activity company” or “DAC,” or;
- (c) another type of company (public limited company, *societas europaea* etc).

CA 2014 provides for an 18 month transition period that commenced on 1 June 2015. At the end of that transition period, where an existing private company fails to elect to convert to some other type of company, that company will be deemed to have become a LTD. The most efficient way to convert is for the shareholders to pass an ordinary resolution adopting a new constitution in place of the existing memorandum and articles of association and changing the company name, within 15 months of the commencement date of 1 June 2015.

*Designated Activity Company (“DAC”):*

As an insurance undertaking cannot be a LTD, the only form of private limited company available to insurance undertakings is a DAC. Section 18(2) of CA 2014 provides “*A company [here it means a LTD] shall not carry on the activity of a credit institution or an insurance undertaking*”.

A DAC is the closest of the new company types to an existing private company and among its key features are:

-  A DAC can have an objects clause, so the company’s corporate capacity will be restricted. A DAC will also be capable of listing debt securities on a stock exchange and publish an offering document.
-  A DAC will have a two-document constitution.

- ▣ A DACs name must end with “designated activity company” or the Irish equivalent.
- ▣ A DAC must have at least two directors.
- ▣ Similar to the previous Companies Acts 1963-2013, single-member DACs may dispense with holding an annual general meeting, multi-member DACs may not.

**(iii) Other Points of Note**

Financial Statements

As regards the approach in relation to financial statements, the Commencement Order clarifies:

1. If the financial year ends before 1 June 2015 and the financial statements are signed by the director(s) before 1 June, they must be prepared and filed in accordance with the 1963-2013 Companies Acts; and
2. If the financial year ends after 1 June 2015, the financial statements must be prepared and filed under the 2014 Act.

Under the Commencement Order the following new obligations in Part 6 of the 2014 Act will be commenced in respect of financial years beginning on or after 1 June 2015:

- ▣ Section 167: Audit committees;
- ▣ Section 225: Director's compliance statement and related statement;
- ▣ Section 305(1)b: Share options disclosure;
- ▣ Section 306(1): Payments to connected persons;
- ▣ Section 326(1)a: Director's names; and
- ▣ Section 330: Directors' report: statement on relevant audit information.

Central Bank Issues Q&A on the Companies Act 2014

On 12 June 2015 the Central Bank issued a Question and Answers document on the 2014 Act as part of its Market Update.

The question outlined within is as follows:

*Question:*

*Does the Central Bank require UCITS management companies, AIFMs, AIF management companies, fund administrators, depositaries and investment firms which are companies to convert to a DAC under the 2014 Act?*

*Answer:*

Section 18(2) of the 2014 Act prohibits private companies limited by shares from carrying on the activity of a credit institution or insurance undertaking. Accordingly, existing credit institutions and insurance undertakings must re-register with the Companies Registration Office as a DAC unless they are public limited companies. The 2014 Act does not require other regulated financial service providers which are companies to convert to DACs. Likewise, the Central Bank will not require the entities mentioned above to convert to DACs as it is of the view that corporate structuring is a matter for each entity. Notwithstanding the corporate structure chosen, regulated financial service providers must comply with all regulatory requirements applicable to them.

The complete markets update is available via the following link:

<https://www.centralbank.ie/regulation/marketsupdate/Pages/default.aspx>

## Workplace Relations Act 2015

### (i) Workplace Relations Act signed into law

The Workplace Relations Act 2015 (the “**Act**”) was signed into law by the President on 20 May 2015. Following this, it was announced in a Department Jobs, Enterprise and Innovation press release on 8 June 2015, that the Minister for Jobs, Enterprise and Innovation, Richard Bruton, (TD) stated that, notwithstanding that a commencement order hasn’t been signed, the 2014 Act will commence on 1 October 2015.

As readers may be aware from our previous legislative updates, the Act represents a significant development in Irish Employment Law, introducing reforms for how workplace disputes are processed. The Government’s objective is to deliver a world-class workplace relations service which is simple to use, independent, effective, impartial, cost effective and provides for workable means of redress and enforcement, within a reasonable period of time.

The Act is available via the following link:

<http://www.irishstatutebook.ie/pdf/2015/en.act.2015.0016.pdf>

## Irish Taxation Update

### (i) EU Savings Directive (“EUSD”)

On 18 March 2015, the European Commission published a proposed Directive which seeks to repeal the EUSD from 1 January 2016 (with certain elements of the Directive remaining in situ past this date). The repealing Directive has not yet been adopted by the European Commission.

It is intended to replace the EUSD with the Standard for Automatic Exchange of Financial Account Information (i.e. the Common Reporting Standard (“CRS”)).

In this way, it is envisaged that for early adopters (which includes Ireland) that the effective start date of the CRS will be 1 January 2016 (new account opening procedures will be required to be in place by 1 January 2016, with pre-existing accounts being those open on 31 December 2015). The first exchange of information is currently targeted to take place by the end of September 2017.

## FATCA

### (i) Revenue Commissioners Publish FAQ Document

In June 2015, Revenue issued a Frequently Asked Questions (“FAQs”) document which is designed to supplement their ‘*Guidance Notes on the Implementation of FATCA in Ireland*’ originally published on 1 October 2014.

These FAQ’s provide clarification on a number of matters regarding FATCA registration and reporting.

They also provide for an extension of the Irish FATCA reporting deadline such that the first FATCA reports for Irish Reporting Financial Institutions are now required to be filed with the Irish Revenue Commissioners by 31 July 2015 (extended from the original deadline of 30 June 2015).

The FAQ document is available via the following link:

<http://www.revenue.ie/en/business/aeoi/index.html>

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