Insurance Quarterly Legal and Regulatory Update

Period covered:
1 April 2017 – 30 June 2017

DUBLIN CAYMAN ISLANDS NEW YORK TOKYO

Table of Contents

Solvency II 2

European Insurance and Occupational Pension Authority (“EIOPA”) 11

European Commission 14

International Association of Insurance Supervisors (“IAIS”) 15

Insurance Europe 17

Insurance Ireland 18

Packaged Retail Insurance-Based Investment Products (“PRIIPS”) 18

Pensions Update 19

Central Bank of Ireland 22

Companies (Accounting) Act 2017 23

European Markets Infrastructure Regulation (“EMIR”) 24

Market Abuse Regulation (“MAR”) 28

Prospectus Directive 29

Anti-Money Laundering (“AML”)/Counter-Terrorist Financing (“CTF”) 31

Data Protection 36

Solvency II

(i) EIOPA releases methodology and calculations for the ultimate forward rate under Solvency II

On 5 April 2017, EIOPA published a number of documents relating to the methodology and calculations for the ultimate forward rate (the "**UFR**"), the principles of which are defined in the Solvency II legislation. The UFR Methodology will be applied for the first time in the calculation of the risk-free interest rates of January 2018. The methodology is a result of extensive work and the documents published include the following:

- **Specification of the methodology to derive the UFR:** This sets out information on updates to the UFR. EIOPA will annually calculate the UFRs and, where they are sufficiently different according to the methodology from the then applicable UFRs, EIOPA will update them at the beginning of the next year. The updated UFRs will be announced every year by the end of March. Nine months after the announcement of the updated UFRs, EIOPA will use them to calculate the risk-free interest rate term structures for the term structures of 1 January of the following year.

A copy of the specification of the methodology may be accessed here.

- **Calculation of the UFR for 2018**: This sets out information on the calculation of the UFR, which is for the first time applicable for the calculation of the risk-free interest rates of 1 January 2018, including the calculation of the expected real rate, the expected inflation rate, the calculated UFRs and the UFRs applicable in 2018 and information on the projection of the UFR. It must be noted that an updated version of this document was published on 23 May 2017 (dated 17 May 2017) to correct the applicable UFR for the Mexican Peso on page 3.

A copy of the calculation of the UFR for 2018 can be accessed here.

- **Results of the impact analysis of changes to the UFR:** This document sets out the results of the information request to (re)insurance undertakings that EIOPA carried out at the end of 2016 assessing the impact of changing the UFRs by 20 bps and by 50 bps on their prudential balance sheet and on their solvency position. The information request showed that the impact of these changes is very small.

The results of the impact analysis of changes to the UFR can be accessed here.

- **FAQs on the UFR:** EIOPA also published a set of FAQs on the UFR providing information on, amongst other things, why EIOPA suggested changing the UFR and what steps EIOPA took to derive the methodology.

A copy of the FAQs may be accessed here.

On 23 May 2017, EIOPA published its Final Report on consultation paper no 16/003 on the methodology to derive the UFR (the "**Final Report**"). EIOPA consulted on the methodology in April 2016 and section 2 of the Final Report includes a summary of the main comments received and EIOPA's resolution of these comments. In addition, the Final Report contains the final methodology to derive the UFR and how it will be implemented in section 3, the results of the information request to undertakings on the UFR in section 4 and a resolution table with all stakeholder comments in the Annex**.**

A copy of the Final Report can be accessed here.

(ii) EIOPA issues proposed amendments to Solvency II technical standards on reporting and disclosure

On 21 April 2017, EIOPA published a press release in which it announced that it identified some required amendments to the implementing technical standards ("**ITS**") on the templates for the submission of information to the supervisory authorities ("**ITS on Reporting**") and the ITS relating to the procedures, formats and templates of the solvency and financial condition report ("**ITS on Disclosure**") under Directive 2009/138/EC (the "**Solvency II Directive**").

In addition to the ITS, the proposed amendments also concern the EIOPA guidelines on reporting for financial stability purposes and the EIOPA guidelines on the supervision of branches of third-country insurance undertakings. Some of the amendments have an impact on the Solvency II XBRL Taxonomy, namely the governance of Taxonomy releases.

All interested parties were invited to comment on the proposed amendments or to submit possible further amendments by 8 May 2017.

The full press release can be accessed here.

(iii) EIOPA publishes call for evidence on the treatment of unlisted equity and debt without external rating in the standard formula

On 26 April 2017, EIOPA published a call for evidence on the treatment of unlisted equity and debt without an external credit assessment institution ("**ECAI**") rating in the standard formula (the "**Call for Evidence**").

The Call for Evidence follows the Commission's second call for advice on the Commission Delegated Regulation (EU) 2015/35 (the "**Solvency II Delegated Regulation**") in February 2017 which related to the removal of unjustified constraints to financing. More specifically, the Commission requested advice in the areas of unrated debt, unlisted equities and strategic equity investments. Strategic equity investments are outside the scope of the Call for Evidence which focuses on unrated debt and unlisted equities.

In relation to unrated debt, EIOPA was asked to provide clear criteria for unrated debt to identify those instruments with a better risk profile as a first step in reducing over-reliance on external credit ratings for regulatory purposes.

In relation to unlisted equities, EIOPA was asked to provide clear criteria applicable to portfolios of unlisted equity from the European Economic Area ("**EEA**") to identify instruments that could benefit from the same risk factor as a listed equity.

The Call for Evidence contains a number of questions to stakeholders on these topics in order to allow stakeholders to provide their views and collect evidence. Comments on the Call for Evidence were due by 24 May 2017.

EIOPA will prepare draft advice to the Commission based on the feedback received and plans to consult on these proposals in November 2017.

The Call for Evidence may be accessed here.

(iv) Central Bank publishes updated policy notice on reporting under Solvency II

In May 2017, the Central Bank published an update to its policy notice on the Options and Discretions on submission of information under Solvency II (the "**Policy Notice**"). The Policy Notice replaces the October 2015 policy notice and sets out the Central Bank's updated requirements and guidance in relation to the implementation of discretions and options relating to the submission of information arising under Solvency II.

The Policy Notice deals with the following:

- **Exemptions from Solvency II quarterly regulatory reporting:** The Central Bank had previously exercised its discretion to exempt certain undertakings from the requirement to submit certain templates on a quarterly basis. Following a review of its position and given only a small number of firms benefited from this exemption, the Central Bank has decided that with effect from 1 January 2017 all undertakings and groups, for which the Central Bank is group supervisor, are required to submit all quarterly supervisory reporting due in accordance with the Solvency II requirements.

- **Solvency II Reporting Currency:** Solvency II gives discretion to the Central Bank to require undertakings and groups to prepare their Solvency II supervisory reports in a currency other than that used to prepare their financial statements. The Central Bank has not exercised the discretion and therefore (re)insurance undertakings and those undertakings/companies at the head of a group supervised by the Central Bank, must prepare and submit their Solvency II supervisory reports in the currency used to prepare the statutory financial statements and/or consolidated financial statements.

- **Exchange Rates:** Solvency II provides for a discretion to permit undertakings and groups to use a different exchange rate from that used to prepare their Solvency II financial statements for the purposes of Solvency II regular supervisory reporting. The

Central Bank has not exercised this discretion and therefore (re)insurance undertakings and those undertakings/companies at the head of a group supervised by the Central Bank, must use the exchange rate used to prepare their Solvency II financial statements and/or consolidated financial statements for the purposes of Solvency II regular supervisory reporting.

The Policy Notice can be accessed here.

(v) Solvency II Commission Implementing Regulation (EU) 2017/812 published in the Official Journal of the EU

On 18 May 2017, Commission Implementing Regulation (EU) 2017/812 of 15 May 2017 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 31 March 2017 until 29 June 2017 in accordance with the Solvency II Directive (2009/138/EC) (the "**Commission Implementing Regulation**") was published in the Official Journal of the EU.

For prudential reasons, it is necessary for (re)insurance companies to use the same technical information for the calculation of technical provisions and basic own funds for reporting, irrespective of the date on which they report to their competent authorities. The Commission Implementing Regulation provides that (re)insurance companies must use the technical information on relevant risk-free interest rate term structures, fundamental spreads for the calculation of the matching adjustment and volatility adjustments referred to in Article 1(2) of the Commission Implementing Regulation when calculating technical provisions and basic own funds for reporting with reference dates from 31 March 2017 until 29 June 2017.

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

The Commission Implementing Regulation entered into force on 19 May 2017, applies from 31 March 2017 and is binding in its entirety and directly applicable in all Member States.

This Commission Implementing Regulation can be accessed here.

(vi) EIOPA publishes the 2.2.0 draft version of Solvency II XBRL Taxonomy

On 7 June 2017, EIOPA published the 2.2.0 working draft version of the Solvency II XBRL Taxonomy which is to be applied by insurance companies for reporting with the reference date of 31 December 2017.

XBRL (eXtensible Business Reporting Language) is an IT language for the electronic preparation, exchange and analysis of business information. Solvency II XBRL Taxonomy is a systematised description of all Solvency II reporting requirements. It was developed by EIOPA to ensure the harmonised XBRL reporting under Solvency II.

EIOPA invited comments on the updated version of the Solvency II XBRL Taxonomy before 30 June 2017 with a view to releasing the final 2.2.0 version in mid-July 2017.

The release notes for the draft 2.2.0 Solvency II XBRL Taxonomy can be found here.

(vii) European Commission adopts Delegated Regulation amending Solvency II Delegated Regulation

On 8 June 2017, the European Commission adopted a Delegated Regulation amending the Solvency II Delegated Regulation concerning the calculation of regulatory capital requirements for certain categories of assets held by insurance and reinsurance undertakings (infrastructure corporates) (the "**Amending Delegated Regulation**").

The Solvency II Delegated Regulation was previously amended in 2016 to provide for appropriate risk calibrations for qualifying infrastructure projects but not infrastructure corporates.

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

The Council of the EU and the European Parliament will now consider the Amending Delegated Regulation and, if neither objects, it will be published in the Official Journal of the EU and will enter into force on the date after its publication.

An impact assessment and executive summary were published with the Amending Delegated Regulation.

The Amending Delegated Regulation may be accessed here.

The impact assessment may be accessed here.

The executive summary may be accessed here.

(viii) EIOPA publishes report on the supervisory assessment of the ORSA

On 19 June 2017, EIOPA published a report on the Own Risk and Solvency Assessment ("**ORSA**") and (the "**Report**"). The Report outlines EIOPA's analysis of the first supervisory experiences regarding the application of the regulation on the ORSA by (re)insurance undertakings.

The ORSA is part of the undertakings' risk management system and is regulated by Article 45 of the Solvency II Directive (See Regulation 47 of the European Union (Insurance and Reinsurance Regulations 2015 (S.I. 485 of 2015) (the "**Solvency II Regulations**"). The

analysis is based on observations collected by the National Supervisory Authorities ("**NSAs**") in the EEA up to the end of 2016.

The key findings were as follows:

- The majority of insurance and reinsurance undertakings have made good progress in implementing the ORSA process;
- There is a need for greater involvement of the administrative, management or supervisory bodies in the ORSA process;
- The scope of undertakings' risk assessments should be further expanded and a deeper risk analysis needs to be undertaken;
- There is overreliance on the standard formula by undertakings and EIOPA recommends that the assessment of the significance with which undertakings' risk profiles deviate from the assumptions underlying the solvency capital requirement under the standard formula should be further improved; and
- The quality of stress testing including reverse stress tests and scenarios used in the ORSA assessments to be further improved.

The Report may be accessed here.

(ix) EIOPA publishes updated technical methodology documentation for the risk-free interest rate term structures for Solvency II

During Quarter 2, EIOPA published updates to the technical documentation of the methodology to derive EIOPA's risk-free interest rate term structures ("**RFR**") for Solvency II (the "**RFR Updates**").

Under Solvency II, the RFR underpins the calculation of liabilities by insurance and reinsurance undertakings. EIOPA is required to publish the RFR.

The RFR technical methodology documentation aims to assist users in complying with their obligations under the Solvency II Directive by explaining in a transparent manner how the relevant RFRs are derived. It is published to achieve a consistent calculation of technical provisions. EIOPA notes that it does not constitute legal advice.

The RFR Updates during the Quarter include:

In May 2017, the update includes the following change:

- Most government bond tickers used in the calculation were replaced because the possibility of downloading the ticker data had been terminated by the data provider.

The change is implemented in table 1 on pages 23 to 25. The new tickers are applied for reference dates from 1 April 2017 onwards.

In June 2017, the update includes the following change:

- The peer country for Luxembourg was changed from France to the Netherlands. The change is implemented in table 11 on page 64. The new peer country will be applied for reference dates from 1 June 2017 onwards.

The RFR Technical Documentation can be accessed here.

(x) EIOPA publishes first set of Solvency II statistics on EU insurance sector

On 28 June 2017, EIOPA published its first set of comprehensive statistical information on the EU insurance sector based on Solvency II reporting, together with a related FAQs document.

The statistics are based on quantitative Solvency II reporting from insurance undertakings and groups in the EU and EEA.

The statistics include aggregated country-level information about:

- the balance sheet;
- own funds;
- capital requirements;
- premiums; and
- claims and expenses based on regulatory reporting of around 3,000 insurance undertakings operating in Europe.

EIOPA explained in a related press release that these statistics contain up-to-date and high quality data, including country breakdowns and distributions of key variables, providing a comprehensive picture of the EU insurance sector.

The statistics will be published on a quarterly basis, with this first set relating to the third quarter of 2016. EIOPA envisages that over time it will develop the scope and level of detail of these statistics and future releases will also provide end-year information and key profitability and financial stability indicators for the largest EU insurance groups and undertakings on an aggregated level.

The statistics and FAQs may be accessed here.

The press release may be accessed here.

(xi) Central Bank issues 'Dear CRO' letter on Operational Risk Management

On 28 June 2017, the Central Bank published a 'Dear CRO' letter on operational risk management (the "**Letter**"). The Letter sets out its findings following a number of on-site inspections across a number of high-impact insurance undertakings. These inspections assessed life and non-life insurers against the core elements of the Solvency II, Pillar II requirements with a primary objective to assess the design, implementation and operating effectiveness of the Operational Risk Management frameworks ("**ORM**"), as a sub-set of the overall Risk Management Framework.

In the Letter, the Central Bank noted that the overarching conclusion from these inspections is that insurance companies are at different states of maturity, both in terms of design and embeddedness of their risk management system. With a view to improving the consistency of the implementation of the Solvency II, Pillar II requirements, and to encourage improved ORM across the insurance industry, the Letter also sets out, in the Appendix, some examples of good and poor practices observed during these inspections.

The Central Bank's Letter can be accessed here.

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

On a monthly basis, EIOPA updates information on the symmetric adjustment of the equity capital charge. The symmetric adjustment to the equity capital charge shall be included in the calculation of the equity risk sub-module in accordance with the Solvency Capital Requirement (the "**SCR**") standard formula to cover the risk arising from changes in the level of equity prices. This adjustment is regulated mainly in Article 106 of the Solvency II Directive (2009/138/EC); Article 172 of the Solvency II Delegated Regulation as well as in the Implementing Technical Standards on the equity index for the symmetric adjustment of the equity capital charge (Commission Implementing Regulation 2015/2016/EU).

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

- With reference to the end of March 2017 on 7 April 2017;
- With reference to the end of April 2017 on 8 May 2017; and
- With reference to the end of May 2017 on 8 June 2017.

The monthly symmetric adjustment of the equity capital charge can be accessed here.

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

EIOPA intends to publish the RFR on a monthly basis to ensure consistent calculation of technical provisions across the EU.

In Quarter 2, EIOPA published the RFR as follows:

- With reference to the end of March 2017 on 7 April 2017;
- With reference to the end of April 2017 on 8 May 2017; and
- With reference to the end of May 2017 on 8 June 2017.

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

EIOPA's background material and the monthly technical information on the relevant risk-free interest rate term structures can be accessed here.

(xiv) EIOPA publishes updated Solvency II Questions and Answers

During Quarter 2, EIOPA published updated Solvency II Q&As on the following:

- (EU) No 2015-2450 with regard to the templates for the submission of information to the supervisory authorities (Last updated 30 June 2017);
- (EU) No 2015-2011 with regard to the lists of regional governments and local authorities (Last updated 8 June 2017);
- Answers to questions on the Solvency II Delegated Regulation supplementing the Solvency II Directive (Last updated 30 June 2017); and
- Answers to questions on Guidelines on the System of Governance (Last updated 12 May 2017).

The EIOPA Solvency II Q&As can be accessed here.

The Answers to Questions on the Solvency II Delegated Regulation can be accessed here.

European Insurance and Occupational Pension Authority ("EIOPA")

(i) EIOPA issues report on thematic review on monetary incentives and remuneration between providers of asset management services and insurance undertakings

On 26 April 2017, EIOPA published a report setting out the findings of its EU-wide thematic review (the "**Review**") of consumer protection issues in the unit-linked market emerging from the business interlinkages between providers of asset management services and insurance undertakings which was launched in July 2016 (the "**Report**").

In particular, the Review focused on sources of potential consumer detriment resulting from the existence of monetary incentives and remuneration payments obtained by insurance undertakings from in-house or external asset managers responsible for managing the assets of unit-linked funds.

The key issues considered in the Review were the following:

- the existence, magnitude and structure of monetary incentives and remuneration;
- the way in which insurance undertakings structure their unit-linked products; and
- the measures taken or not taken by insurance undertakings to address conflicts of interest and act in the best interests of customers.

Evidence was collected with reference to the year 2015 from 218 insurance undertakings operating in 28 Member States and a sample of more than 1800 underlying investment vehicles used by insurance undertakings in the structuring of unit-linked funds.

Some of the main findings set out in the Report include the following:

- Monetary practices are widespread and significant with 81% of participating insurance companies having received monetary incentives and remuneration from asset managers;
- The Review provided evidence to conclude that poor or inconsistent mitigation of conflicts of interest could lead to material consumer detriment. Insurance undertakings generally have formal policies to ensure they act in their customers' best interests, however actual practices under these formal policies vary significantly;
- In-depth analysis of how insurance undertakings manage the assets of unit-linked funds revealed significant inconsistencies and potential issues with the selection and monitoring of assets. Less than 3% of unit-linked assets are directly managed by insurance undertakings; in-house asset managers (belonging to the same group as the insurance undertaking) manage 69% of assets, and external asset managers manage 28% of assets but pay almost 50% of total remuneration.

The Report also identified a number of sources of potential consumer detriment including:

- No or poor disclosure of monetary practices;
- Higher costs for policy holders;
- Poor investment outcomes; and
- Reduced and unsuitable offering – choosing underlying investment vehicles on the basis of the highest level of monetary incentives and remuneration may limit the choice of products to policyholders.

The Report may be accessed here.

(ii) EIOPA publishes Risk Dashboard for April 2017

On 15 May 2017, EIOPA published its risk dashboard for Quarter 4, 2016 (the "**Risk Dashboard**"). EIOPA publishes the Risk Dashboard on a quarterly basis, in accordance with its obligations under the EIOPA Regulation ((EU) 1094/2010) and following a framework determined in cooperation with the other ESAs, the ESRB and the ECB.

The Risk Dashboard summarises the main risks and vulnerabilities in the European insurance sector by using a set of indicators grouped into seven risk categories including macro risk, credit risk, market risk, funding and liquidity risk, profitability and solvency risk and risks resulting from interlinkages and imbalances and insurance (underwriting) risks.

In setting out its current key observations, EIOPA stated the following:

- Risks for the insurance sector remained stable overall in Q4 and some improvements were observed. Solvency II ratios are stronger, due in part to higher market values of assets and the increase of the risk free curve used for discounting the technical provisions.
- Volatility has decreased and inflation rates have slowly started to converge to desired target levels.
- The continuing low-yield environment and the observation that market fundamentals might not properly reflect the underlying credit risk still represent important concerns for the EU insurance industry. This is also reflected by the slightly deteriorating market perception and the recent underperformance of insurance stock prices.

The Risk Dashboard is available here.

(iii) EIOPA publishes MoU signed with World Bank

On 15 June 2017, EIOPA signed a new memorandum of understanding ("**MoU**") with the International Bank for Reconstruction and Development ("**IBRD**") and the International Development Association ("**IDA**") (together, the "**World Bank**").

In a related press release, EIOPA notes that the MoU replaces a MoU from 2013 between EIOPA and the World Bank with the purpose of reinforcing the co-operation between the parties. It further states that the objectives of the MoU are as follows:

- To contribute to the process of promoting a more risk-based regulatory and supervisory framework, and in this respect to the dissemination of knowledge and policy experiences;
- To foster efficient and effective supervision;
- To promote consumer protection, financial literacy and education initiatives by competent authorities; and
- To contribute to financial stability and identification of systemic risk.

The MoU provides a framework within which EIOPA and the World Bank can develop and undertake collaborative activities in order to pursue the MoU's objectives.

The MoU will remain effective for three years from the date it was entered into (i.e. from 15 June 2017).

The MoU can be accessed here.

The press release may be accessed here.

(iv) EIOPA publishes June 2017 Financial Stability Report

On 20 June 2017, EIOPA published its June 2017 Financial Stability Report of the insurance, reinsurance and occupational pensions sectors in the European Economic Area (the "**Report**").

In a related press release, EIOPA stated that the highlights of the Report include:

- The European macroeconomic environment remains fragile, with some signs of improvement;
- The application of a risk-based Solvency II regime was carried out smoothly in a low yield environment and overall the European insurance sector is adequately capitalised;

- Following Solvency II implementation no major shifts in insurers' portfolio allocation are observed;
- The situation remains largely unchanged in the reinsurance sector; and
- In the European occupational pension fund sector, total assets for the euro area increased.

The Report may be accessed here.

EIOPA's press release may be accessed here.

(v) EIOPA responds to European Commission's FinTech consultation

On 16 June 2017, EIOPA published its submission to the European Commission's March 2017 consultation paper on FinTech: a more competitive and innovative European financial sector (the "**Response**").

EIOPA welcomed the opportunity to respond to the consultation highlighting the strategic importance of digitalisation and Insurtech for the insurance and pensions sectors and also noting some of the work EIOPA has done in the area.

The annex to the Response sets out in more detail the existing and future work of EIOPA in relation to Insurtech and digitalisation, together with other topics that were addressed in the consultation that are relevant for the insurance and pension sectors such as the automation of financial advice, block-chain, artificial intelligence, and peer-to-peer insurance.

EIOPA also noted in the Response that it will continue to monitor these financial innovations in view of their potential impact and take action as relevant.

The Response may be accessed here.

European Commission

(i) European Commission publishes communication on mid-term review of CMU action plan

On 8 June 2017, the European Commission published a communication on the mid-term review of the capital markets union ("**CMU**") action plan.

Recognising that a number of new challenges have arisen which impose a need to strengthen and transform the EU's capital markets reform agenda, the purpose of this mid-term review is to update and complement the Commission's original CMU agenda with new priority measures, drawing on the responses to the public consultation held in Quarter 1.

The mid-term review provides information on the Commission's progress and work done in relation to measures announced in the CMU action plan and notes that the Commission intends to move forward with legislative proposals for a simple, efficient and competitive EU personal pension product, for removing cross-border obstacles to the ownership of securities and for covered bonds.

Amongst the new priorities of the mid-term review of CMU, the Commission will aim to strengthen the supervisory framework for capital markets, to enhance the proportionality of rules for small listed companies and for investment firms, to remove further barriers to cross-border investment, to strengthen the EU's leadership on sustainable finance, and to enable FinTech.

The mid-term review sets out a comprehensive reform agenda so that the building blocks of the CMU are in place by 2019.

The communication may be accessed here.

International Association of Insurance Supervisors ("IAIS")

(i) IAIS launches consultations on revised draft ICPs

During Quarter 2, the IAIS launched consultations on revisions to a number of the Insurance Core Principles ("**ICPs**").

On 1 June 2017, IAIS consulted on a revised version of ICP 13 on Reinsurance and Other Forms of Risk Transfer. A public background call to receive initial public feedback on this consultation was held on 5 June 2017 and comments can be made on the revised draft ICP 13 until 31 July 2017.

ICP 13 consultation may be accessed here.

On 30 June 2017, the IAIS launched a consultation on the following revised draft ICPs:

- ICP 1: Objectives, powers and responsibilities of the supervisor;
- ICP 2: Supervisor;
- ICP 18: Intermediaries; and
- ICP 19: Conduct of business.

IAIS is inviting comments on these revised ICPs until 29 August 2017.

Further information on the consultation(s) and links to the consultation papers may be accessed here.

It is also intended that a further ICP consultation on ICP 24 on macroprudential surveillance and insurance supervision will be launched in Quarter 3.

(ii) IAIS consults on draft application paper on product oversight in inclusive insurance

On 30 June 2017, the IAIS launched a consultation on a draft Application Paper on Product Oversight in Inclusive Insurance (the "**Application Paper**").

The Application Paper builds on the Issues Paper on Conduct of Business in Inclusive Insurance (2015) that more broadly deals with the fair treatment of customers in inclusive insurance markets.

The IAIS states that the Application Paper intends to provide guidance to supervisors, regulators and policymakers when considering, designing and implementing regulations and supervisory practices on product oversight in inclusive insurance markets. It is further suggested that the insurance industry may want to take note of the paper as they are expected to design products that are suitable for their target customers.

The Application Paper is structured as follows:

- Section 2 provides explanatory language around the concept of product oversight to demarcate the scope of the Application Paper.
- Section 3 gives a description of the typical inclusive insurance market and typical inclusive insurance customer in order to provide the context in which product oversight is applied and needs to be effective to treat the inclusive insurance customer fairly.
- Section 4 explains the concept of proportionality and the impact on the implementation and application of the ICPs.
- Section 5 provides application guidance of relevant ICPs in respect of product oversight from the perspective of the requirements addressed to the insurer.
- Section 6 provides application guidance of relevant ICPs in respect of product oversight from the perspective of the implementation of supervisory oversight in this area.

IAIS is inviting feedback on the Application Paper by 30 July 2017.

Further information on the consultation may be accessed here.

Insurance Europe

(i) Insurance Europe published proposal for an alternative treatment of equity risk under Solvency II

On 30 May 2017, Insurance Europe published its proposal for an alternative treatment of equity risk under Solvency II: Strategic participations and long-term equity investment strategies (the "**Proposal**").

Insurance Europe believes that the current capital requirements for long-term investments in Solvency II are based on an inappropriate view of how insurers conduct their investment activities. Insurance Europe are of the view that insurers are exposed to long-term risks and not short-term value shocks. In this regard, the Proposal sets out a number of questions that Insurance Europe believes to remain unaddressed by the European Commission.

Insurance Europe also puts forward two proposals for changes in the equity risk sub-module, namely:

- Adjusting the requirements for strategic participations; and
- Allowing for an alternative treatment of long-term investment strategies.

The Proposal can be accessed here.

(ii) Insurance Europe publishes press release on EU Insurance Rules

On 1 June 2017, Insurance Europe published a press release noting comments made by the European insurance and reinsurance federation's president, Sergio Balbinot, at Insurance Europe's 9th International Conference at which he noted that rules governing insurers must allow them to provide innovative products to meet the constantly evolving demands of consumers.

The press release notes insurers' concerns that new consumer protection rules such as the Packaged Retail and Insurance-based Investment Products Regulation ("**PRIIPs Regulation**") and the Insurance Distribution Directive ("**IDD**") do not reflect the evolving needs of consumers.

Balbinot further commented that people are increasingly buying products online and on mobile devices, however, the PRIIPs Regulation and the IDD mean that consumers will have to make sense of up to 161 items of information on paper and that this does not reflect the needs of someone buying insurance on a mobile phone.

The press release may be accessed here.

Insurance Ireland

(i) Insurance Ireland publishes press release calling for regulatory 'grandfathering' of UK regulated insurers looking to locate in Ireland

On 4 May 2017, Insurance Ireland issued a press release calling for regulatory grandfathering of UK-based insurers to assist those looking to invest in Ireland post-Brexit.

Insurance Ireland believes that regulatory grandfathering of UK-based insurers would help to protect Ireland's status as an international hub for insurance. Regulatory grandfathering in this manner would give an insurer regulated by the Prudential Regulation Authority ("**PRA**") with a good record, a credit in the approval process, thus enabling them to trade in Ireland on a similar basis as their current circumstances in the UK.

Insurance Ireland further believes that a regulatory corridor should be established between the Central Bank and the PRA to allow for rapid approval of Irish entities who are seeking to export their services to the UK.

The full press release may be accessed here.

Packaged Retail Insurance-Based Investment Products ("PRIIPS")

(i) Revised Delegated Regulation on RTS on KID on PRIIPs published in Official Journal of the EU

On 12 April 2017, a Commission Delegated Regulation (EU) 2017/653 (the "**Delegated Regulation**") supplementing the Regulation on key information documents ("**KIDs**") for packaged retail and insurance-based investment products ("**PRIIPs"**) (Regulation 1286/2014) was published in the Official Journal of the EU.

The Delegated Regulation lays down regulatory technical standards ("**RTS**") regarding the presentation, content, review and revision of KIDs and the conditions for fulfilling the requirement to provide KIDs. The Delegated Regulation came into force on 2 May 2017 and it will apply from 1 January 2018. Article 14(2) will apply until 31 December 2019.

On 11 May 2017, a corrigendum to the text of Delegated Regulation was published in the Official Journal of the EU.

The Delegated Regulation can be accessed here.

The corrigendum can be found here.

Under Article 14(2), as a derogation from Article 14(1), PRIIP manufacturers may use a UCITS KID to provide specific information for the purposes of Articles 11 to 13 of the Delegated Regulation, where at least one of the underlying investment options referred to

in Article 14(1) is a UCITS or non-UCITS fund referred to in Article 32 of the PRIIPs Regulation.

(ii) European Working Group develops templates for PRIIPs information exchange

On 30 June 2017, Insurance Europe published templates which seek to facilitate the exchange of information between insurers and asset managers that is required under the PRIIPs Regulation (1286/2014/EU) in relation to multi-option products ("**MOPs**").

These templates were developed by a European Working Group, of which Insurance Europe is a member. The Working Group comprises asset managers, insurers and their national associations.

In its press release, Insurance Europe stated that the templates provide a functional description of the set of data to be exchanged from asset managers and banks to insurers to help them fulfil their obligations under the PRIIPs Regulation.
The templates include:

- The European PRIIPs template ("**EPT**"): This template includes the minimum data necessary for insurers to produce a KID in accordance with the provisions of the PRIIPs Regulation. Asset managers will deliver the files for free.

- The "Comfort" EPT: This template includes more data and therefore its delivery depends on ad hoc bilateral agreements between insurers and asset managers.

Insurance Europe also noted that the use of these templates is not compulsory.

It its noteworthy that the European Fund and Asset Management Association ("**EFAMA**") also published these templates on 3 July 2017.

The press release and templates may be accessed here.

Pensions Update

(i) Pensions Authority issues compliance alert in relation to the signing of annual reports

On 25 April 2017, the Pensions Authority issued a compliance alert relating to the signing of the Trustee annual report ("**TAR**").

The TAR provides information on scheme activity for the previous scheme year including membership, financial information and investment performance. Trustees are legally obliged to sign this document to demonstrate their responsibility and stewardship of the scheme and this statutory obligation cannot be delegated or outsourced.

The Pensions Authority has identified a number of instances of non-compliance with this trustee obligation and is highlighting the importance of signing the TAR and not delegating or outsourcing this statutory obligation. The TAR must be signed by two trustees, or where there is only one trustee, by that trustee.

The Pensions Authority will be keeping this matter under review and will consider compliance action where appropriate.

The compliance alert may be accessed here.

(ii) Pensions Authority publishes compliance alert in relation to electronic communications and member consent

On 25 May 2017, the Pensions Authority issued a compliance alert on electronic communications and member consent.

The Occupational Pension Schemes (Disclosure of Information) Regulations 2006 provides that trustees are legally obliged to provide scheme members with certain information in relation to their retirement savings at various points during their scheme membership. The Pensions Authority notes that this information may be provided to members in electronic format in circumstances where members give their consent and trustees are satisfied of their compliance with data protection legislation.

Given that the statutory information provided to members is necessary for members to make appropriate and fully informed decisions about their retirement savings, trustees should bear this in mind when considering whether an electronic medium is appropriate based on the general profile of their members.

Where trustees are satisfied that issuing electronic communications to members is appropriate, the active opt-in consent of scheme members must be obtained in accordance with data protection law. The Pensions Authority expects that all necessary actions will be taken by trustees to obtain active consent and the Pensions Authority also recommends that the acquisition and retention of members' consent, together with any associated processes and controls be reviewed periodically.

The compliance alert may be accessed here.

(iii) Irish Funds White Paper on the Pan European Personal Pension Product (PEPP)

On 19 June 2017, Irish Funds published a White Paper on the Pan European Personal Pension Product ("**PEPP**") (the "**White Paper**").

The aim of the White Paper is to help policy discussions on the PEPP by providing a funds industry perspective.

The White Paper details:

- How the PEPP will benefit the EU;
- Key enabling factors fundamental to the PEPP's success;
- Proposed key features of the PEPP;
- How the PEPP will work;
- The Importance of consumer education and awareness;
- How to build on the positive experience of UCITS; and
- The role of taxation.

The White Paper is available here.

(iv) European Commission releases proposal on PEPP

On 29 June 2017, the European Commission released a long-awaited proposal on a pan-European personal pension product. The PEPP is a voluntary regulated personal pension scheme which will be available on a pan-European basis to any individual wishing to save for retirement, regardless of whether they are employed, self-employed, unemployed or in education.

Rather than replacing existing state-based pension arrangements, occupational or personal pension arrangements, it is expected that PEPPs will be used by savers to supplement other pensions which may be inadequate to meet their retirement needs. By ensuring sufficient consumer protection with regard to the key features of the PEPP product, the European Commission intends to create a quality label for EU personal pension products.

Some of the key characteristics under the proposal include the following:

- **Pan-European Passport**: The PEPP framework provides an EU harmonised framework allowing PEPPs which are established in one Member State be sold throughout Europe without any further authorisation requirements;
- **Transparency**: Investors will receive a pre-contractual key information document which must set out the risks and likely performance of the PEPP;
- **Investment Options**: PEPP providers may offer up to five investment options to PEPP savers;
- **Investment Rules**: The categories of asset classes eligible for investment by a PEPP are likely to be wider than those applicable to UCITS on the basis that PEPP may include

longer-term less liquid investments such as investments in property, infrastructure or SME which are not permitted investments in the UCITS sphere;

- **Taxation**: The Commission has recommended that the PEPP to be subject to the same tax treatment as afforded to existing national private pension arrangements; and

- **Different pay-out options**: PEPP providers will be able to offer different types of pay-out options, including annuities, lump sums, a combination of both or regular withdrawals.

The PEPP framework facilitates a wide range of providers being able to offer the PEPP product, including insurance companies, banks, certain investment firms and asset managers (including AIFM and UCITS management companies).

The PEPP proposal will now be considered by the European Parliament and the Council with the European Commission currently expecting that it will enter into application in the course of 2019.

The proposal may be accessed here.

Dillon Eustace has prepared a more detailed article on this which can be found here.

Central Bank of Ireland

(i) Central Bank issues guidelines on completing and submitting life insurance, non-life insurance and reinsurance applications

On 2 June 2017, the Central Bank of Ireland (the "**Central Bank**") published guidelines in relation to the requirements for obtaining authorisation as an insurance or reinsurance undertaking in Ireland (the "**Guidelines**") under the Solvency II Regulations.

Under Regulation 14 of the Solvency II Regulations, any insurance or reinsurance undertaking wishing to establish its head office in Ireland and wishing to carry out the business of insurance or reinsurance must first obtain an authorisation from the Central Bank.

The Guidelines set out the criteria that the Central Bank uses for assessing applications for authorisation; how an applicant would go about making an application; how its application will be processed by the Central Bank and when an applicant will receive authorisation.

The Guidelines may be accessed here.

(ii) Central Bank publishes Discussion Paper on the Consumer Protection Code and the Digitalisation of Financial Services

On 29 June 2017, the Central Bank published a Discussion Paper on the Consumer Protection Code (the "**Code**") and the Digitalisation of Financial Services (the "**Discussion Paper**").

Recognising that digital technologies are transforming retail financial services and the consumer journey, the Central Bank is seeking views from consumers, regulated financial services firms, FinTech firms and any other interested stakeholders on how consumers are or should be better protected in this environment.

The objective of the Discussion Paper is to generate discussion on how the Code addresses emerging risks from digitalisation and to determine if the existing protections need to be enhanced or adapted in specific areas.

The Central Bank is seeking views specifically on the requirements of the Code that relate to:

- Access;
- Provision of information;
- Suitability;
- Complaints handling;
- Claims handling; and
- Retention of consumer records/record keeping.

The Discussion Paper also welcomes views on whether the Code currently impedes firms from adopting technologies that may be beneficial to consumers.

The consultation will be open for comments until 27 October 2017.

The Discussion Paper may be viewed here.

Companies (Accounting) Act 2017

(i) Commencement of Companies (Accounting) Act 2017

The Companies (Accounting) Act 2017 (the "**2017 Act**") came into operation on 9 June 2017, with the exception of section 80, and has amended certain provisions of the Companies Act 2014. The main purpose of the 2017 Act is to transpose EU Directive 2013/34/EU (the "**Accounting Directive**") to bring Irish law in line with new EU accounting

rules. The 2017 Act also makes a number of important miscellaneous amendments to the Companies Act 2014 which are unrelated to the Accounting Directive.

The 2017 Act introduces changes to the preparation and governance of financial statements, the audit of Irish companies and the filing of annual returns.

Amongst those changes, the 2017 Act will reduce the filing regimes for smaller businesses whilst increasing the requirements for medium and large companies. A new "micro company" regime will be introduced with regard to the preparation and filing of financial statements. As regards small or medium sized companies, the thresholds for these criteria have been increased. In addition, changes have been made to the exemptions from the requirements to file group financial statements and to the criteria applicable to entities permitted to file abridged financial statements. New provisions have been included concerning payments to third parties for services of directors. Further, the scope for unlimited companies to avoid filing financial statements has been narrowed (i.e. the use of non-filing structures has been curtailed).

The 2017 Act, which can be accessed here, has also introduced a number of other changes which may also be of relevance. For further details, please contact your advisor at Dillon Eustace.

European Markets Infrastructure Regulation ("EMIR")

(i) ESMA publishes updates on Q&A on EMIR implementation

On 3 April 2017, ESMA announced that it has published an updated version of its Q&A (ESMA70-1861941480-52) on the implementation of EMIR. The Q&A has been updated following the publication of the revised RTS and ITS in the Official Journal of the EU on 21 January 2017. These RTS and ITS will become applicable on 1 November 2017.

ESMA also published a table of the updated validation rules for the reports submitted under the revised technical standards and these rules will become applicable from 1 November 2017.

The updated Q&A, press release and updated validation rules are all available here.

(ii) ESMA publishes responses to consultation on guidelines on transfer of data between trade repositories under EMIR

On 4 April 2017, ESMA published responses to its January 2017 consultation on guidelines on the transfer of data between trade repositories ("**TRs**") under EMIR (ESMA70-708036281-17).

ESMA explained in a related press release that the feedback received will be used to finalise the draft guidelines, with a view to publishing the final version by the third quarter of 2017.

The responses may be accessed here.

(iii) ESMA publishes opinion on portfolio margining for central counterparties ("CCPs") under EMIR

On 10 April 2017, ESMA published an opinion on portfolio margining requirements for CCPs under Article 27 of Commission Delegated Regulation (EU) 153/2013. The ESMA opinion provides clarification as to when two contracts can or cannot be considered as the same instrument for the purpose of portfolio margining. It also clarifies that CCPs have to limit the reduction in margin requirement when portfolio margining different instruments.

The opinion may be accessed here.

(iv) ESMA publishes MoU signed with New Zealand regulators under EMIR

On 18 April 2017, ESMA published a memorandum of understanding ("**MoU**") that it entered into with the Reserve Bank of New Zealand and the Financial Markets Authority of New Zealand under Article 25 of EMIR.

The MoU can be accessed here.

(v) ESMA final report: Technical advice to EC on fees for trade repositories under SFTR and EMIR

On 20 April 2017, ESMA published its final report (ESMA70-151-223) on technical advice to the European Commission about fees for TRs under the Regulation on reporting and transparency of securities financing transactions ("**SFTR**") and on certain amendments to the fees under EMIR.

The report may be accessed here.

(vi) Delegated Regulation delaying EMIR clearing obligation for counterparties with a limited activity volume published in the Official Journal of the EU

On 29 April 2017, the Commission Delegated Regulation (CDR) 2017/751 (the "**Delegated Regulation**") was published in the Official Journal of the EU.

The Delegated Regulation amends three EMIR Delegated Regulations (EU) 2015/2205, (EU) 2016/592 and (EU) 2016/1178 as regards the deadline for compliance with clearing obligations for certain counterparties dealing with OTC derivatives. As a result, the phase-in period for central clearing of OTC derivatives applicable to "category 3" counterparties (i.e. financial counterparties and AIFs qualifying as non-financial counterparties which do with a limited volume of derivative activity) has been delayed by two years.

The Delegated Regulation may be accessed here.

(vii) Draft Legislative Proposals to amend EMIR published by European Commission

On 4 May 2017, the European Commission published a proposed Regulation (COM (2017) 208) to amend EMIR. Rather than fundamental reform, the proposals make a number of targeted modifications to certain aspects of the current regime. The modifications proposed are designed to eliminate disproportionate costs and burdens and to simplify the rules. The areas targeted include:

- Reporting obligations for all counterparties;
- Quality of data reported to trade repositories;
- Clearing obligations threshold;
- Extension of exemption timeframes for Pension Scheme Arrangements;
- Risk-mitigation techniques for non-cleared OTC derivatives contracts; and
- Registration and supervision of, and access to data held in, trade repositories.

The proposed Regulation will be submitted by the European Commission to the Parliament and the Council for their consideration.

The proposed Regulation may be accessed here.

A number of the proposed amendments will have significant impact on market participants.

(viii) ESMA consults on guidelines on CCP conflicts of interest management under EMIR

On 1 June 2017, ESMA published a consultation paper (ESMA70-151-291) on guidelines relating to the management by CCPs of conflicts of interest. The consultation closes on 24 August 2017. ESMA will consider the feedback it receives to the consultation and expects to publish a final report on the guidelines by the end of 2017.

The consultation paper may be accessed here.

(ix) Delegated Regulation on list of exempted entities under EMIR published in the Official Journal of the EU on 10 June 2017

On 10 June 2017, Commission Delegated Regulation (EU) 2017/979 setting out the list of entities exempted from the clearing and reporting requirements under EMIR, was published in the Official Journal of the EU. The Delegated Regulation entered into force on 30 June 2017.

The Delegated Regulation may be accessed here.

(x) Proposed Regulation amending the EMIR supervisory regime for central counterparties

On 13 June 2017, the European Commission published a proposed Regulation (COM (2017) 331 final) amending the EMIR supervisory regime for CCPs. In the related press release, the Commission indicates that the proposed Regulation seeks to overhaul the supervisory arrangements for CCPs established by EMIR. It complements the proposed amendments to EMIR, as well as the Commission proposal for CCP recovery and resolution.

The proposal introduces a more pan-European approach to the supervision of EU CCPs, to ensure further supervisory convergence and accelerate certain procedures. For non-EU CCPs, the proposal builds on the existing third-country provisions in EMIR and will make the process to recognise and supervise third-country CCPs more rigorous for those which are of key systemic importance for the EU. Amongst other changes, the proposal introduces a new "two tier" system for classifying third-country CCPs.

The proposal to amend EMIR will now be transferred to the European Parliament and to the Council for review and adoption. Both institutions will be able to propose additional amendments. The legislative process is expected to complete in late Q4 2018.

The proposed Regulation can be accessed here.

The related press release can be accessed here.

(xi) European Commission adopts amending Delegated Regulation on access to data and aggregation and comparison of data under EMIR

On 29 June 2017, the European Commission adopted a Delegated Regulation amending Commission Delegated Regulation (EU)151/2013 with regard to RTS specifying the data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing data under EMIR (C(2017) 4408 final). ESMA published its final draft RTS on access to data and aggregation and comparison of data under EMIR in April 2016.

The next step will be for the Council of the EU and the European Parliament to consider the amending Delegated Regulation. If neither the Council nor the Parliament object to the amending Delegated Regulation, it will be published in the Official Journal of the EU. It will enter into force on the date following its publication in the Official Journal of the EU. It will apply from 1 November 2017.

The Delegated Regulation may be accessed here.

Market Abuse Regulation ("MAR")

(i) ESMA opinion on accepted market practices on liquidity contracts under the Markets Abuse Regulation (Regulation 596/2014) ("MAR")

On 25 April 2017, ESMA published an opinion in relation to accepted market practices on liquidity contracts under MAR.

Under MAR, an exception is available to the general prohibition of market manipulation where a person establishes that the transaction, order or behaviour in question has been carried out for legitimate reasons and that it conforms with an accepted market practice established in accordance with MAR. Before establishing an accepted market practice, a competent authority must notify ESMA and the other competent authorities of its intention to establish an accepted market practice. ESMA is then required to issue an opinion on the intended accepted market practice within two months of the receipt of the notification.

The opinion sets out agreed points that are expected to be used as a reference in the assessment of such accepted market practices.

The full opinion can be accessed here.

(ii) Corrigendum to Delegated Regulation on RTS on presentation of investment recommendations and disclosure of conflicts of interest under MAR

On 27 April 2017, a corrigendum to the text of the Delegated Regulation ((EU) 2016/958) (the "**Delegated Regulation**") was published in the Official Journal of the EU.

The Delegated Regulation supplements MAR with regard to RTS concerning the objective presentation of investment recommendations or other information recommending or suggesting an investment strategy and for disclosure of particular interests or indications of conflicts of interest.

In particular, the corrigendum makes a number of clarificatory amendments to Article 6(1) of the Delegated Regulation.

The Delegated Regulation came into force on 18 June 2016, and has applied since 3 July 2016.

The corrigendum may be accessed here.

(iii) ESMA announces launch of IT system for the collection of financial instrument reference data

On 30 May 2017, ESMA published a communication (ESMA70-145-103) announcing that its IT system for the collection of financial instrument reference data (that is, the "**Financial Instrument Reference Data System**" or "**FIRDS**") will become operational from 17 July

2017. From that date, market operators of regulated markets ("**RMs**") and investment firms and market operators operating multilateral trading facilities ("**MTFs**") will be able to transmit via FIRDS reference data concerning financial instruments for which a request for admission to trading was made, which were admitted to trading or were traded from 3 July 2016 onwards.

The communication may be accessed here.

(iv) ESMA updates MAR Q&A

On 30 May 2017, ESMA published an updated version of its Q&A on MAR. The updated Q&A include a new answers regarding: disclosure of inside information related to Pillar II requirements; and blanket cancellation of orders policy.

The updated version of the Q&A may be accessed here.

(v) ESMA issues technical standards concerning co-operation between competent authorities under MAR

On 1 June 2017, ESMA published its final report (ESMA70-145-100) on draft implementing technical standards concerning co-operation between NCAs under MAR.

The report sets out procedures and forms for NCAs to exchange information to help each other where necessary under MAR. The text of the draft technical standards is set out in Annex II to the report.

ESMA has submitted the final draft technical standards to the European Commission for endorsement. The Commission has three months to decide whether to endorse the draft technical standards.

The full final report may be accessed here.

Prospectus Directive

(i) New Prospectus Regulation

Regulation (EU) 2017/1129, the new Regulation on prospectuses for the issuing and offering of securities (the "**New Prospectus Regulation**"), was published in the Official Journal of the EU on 30 June 2017 and will enter into force on 20 July 2017. Most of its provisions will come into effect from 21 July 2019.

The New Prospectus Regulation was formally approved by the EU Council on 16 May 2017 and by the European Parliament on 5 April 2017. The New Prospectus Regulation is a key element of the European Commission's CMU initiative. It is intended to broaden the attractiveness of offering and listing securities across the EU, while maintaining a high degree of investor protection. The new regime simplifies the rules and streamlines related

administrative procedures, and makes it cheaper and simpler for small businesses to access capital markets.

The New Prospectus Regulation is designed to repeal and replace the existing body of European prospectus law (namely, the Prospectus Directive (2003/71/EC) and the corresponding implementing measures, including the Prospectus Regulation (809/2004)).

The new regime will not apply retroactively; securities that comply with existing body of European prospectus law will be grandfathered before the New Prospectus Regulation enters into force.

As per the existing body of European Prospectus law, the New Prospectus Regulation will apply if securities are offered to the public or admitted to trading on a regulated market, in the EU, subject to certain exceptions.

Further, as per the existing body of European Prospectus law, the New Prospectus Regulation provides that it does not apply to "*units issued by collective investment schemes other than the closed-ended type*".

A number of the key changes made to the existing regime by the New Prospectus Regulation include:

- no prospectus will be required for capital raisings and crowdfunding projects up to €1 million;
- the threshold beyond which a prospectus is mandatory is increased from €5 million to €8 million in capital raised. Below that threshold, issuers can raise capital in accordance with rules set for local growth markets;
- the EU growth prospectus, a new type of prospectus, will be available for small – medium enterprises ("**SMEs**") and in certain circumstances, non-SMEs (small mid-caps) admitted to an SME growth market or small issuances by unlisted companies in certain circumstances with up to 499 employees;
- a new corporate bond prospectus, previously only for debt issued in denominations of at least €100 000, will be available for admission to wholesale debt markets;
- a frequent issuer regime will be available for frequent participants in capital markets, reducing approval times from ten working days to five;
- for secondary issuances, issuers already admitted to stock markets and SME growth markets will benefit from a lighter prospectus for follow-up issuances;
- prospectus summaries will be shorter and the language used clearer;

- paper prospectuses will no longer be required, unless a potential investor requests one; and

- a European online prospectus database will be operated free of charge by the European Securities and Markets Authority.

The New Prospectus Regulation will have direct effect without requiring implementation at the national level, unlike the previous Prospectus Directives. As regards the existing Irish prospectus legislation, it is anticipated that changes may be required to ensure consistency with the new regime.

The New Prospectus Regulation may be accessed here.

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

(i) Joint Committee of the ESAs publishes consultation paper on draft guidelines under revised Wire Transfer Regulation

On 5 April 2017, the Joint Committee of the ESAs published a consultation paper (the "**Consultation Paper**") on draft guidelines under the revised Wire Transfer Regulation (*Regulation (EU) 2015/847*) ("**Revised WTR**"). The revised WTR will apply in Member States from 26 June 2017.

It is stated in the Consultation Paper that the draft guidelines build on the common understanding of the obligations imposed by EU Regulation 1781/2006 (the "**Original WTR**"). The draft guidelines widen the scope of the Original WTR and take the new legal framework and international anti-money laundering and counter-terrorist financing standards into account. The draft guidelines specify what payment service providers ("**PSPs**") should do to detect and prevent the abuse of fund transfers for terrorist financing and money laundering purposes.

The Consultation Paper can be accessed here.

(ii) Progress towards implementation of the 4th EU Anti-Money Laundering Directive in Ireland

Member States had until 26 June 2017 to implement the 4th EU Money Laundering Directive ("**MLD4**") which has the aim of strengthening laws in the EU to combat money laundering and terrorist financing.

Article 30(1) of MLD4 has already been implemented into Irish law by virtue of the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016. These Regulations, which came into operation on 15 November 2016, set out the requirements on corporates and other legal entities to obtain and hold adequate, accurate and current information on their beneficial ownership, including details of the beneficial interests held. A separate provision (Article 31) of MLD4 deals with the beneficial ownership of trusts, and has not yet been transposed into Irish law.

It is proposed that most of the remaining provisions of MLD4 will be implemented into Irish law by the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill (the "**Bill**"). The general scheme of the Bill was published by Department of Justice and Equality in January 2017. In March 2017, the Irish Funds Industry AML working group led a review of the general scheme of the Bill and provided comment/feedback to the Department, a copy of which can be accessed here.

It is anticipated that the Bill will not be adopted in Ireland until the Fifth Money Laundering Directive ("**MLD5**") has been adopted by the European Parliament, which is expected to occur in Q4 2017.

MLD4 required each Member State to establish a central register of beneficial ownership of corporate and other legal entities, including trusts, by 26 June 2017. As a result of the discussions concerning the MLD5 proposals, the Department of Finance has indicated that it is envisaged that the central register of beneficial ownership is now expected to be launched in Q4 2017.

(iii) Joint Committee of ESAs publishes official translations of its guidelines on risk-based supervision under the Fourth Money Laundering Directive ((EU) 2015/849) ("MLD4")

On 7 April 2017, the Joint Committee of the ESAs published the 22 official EU language versions of its guidelines on risk-based supervision under Article 48(10) MLD4. The guidelines require NCAs to notify the ESAs as to whether they comply or intend to comply with the guidelines by 7 June 2017. If such a notification has not been received by this deadline, NCAs will be deemed to be non-compliant.

The final guidelines are available for download here.

(iv) Further rejection by European Parliament of the list of high-risk third countries proposed by the European Commission under MLD4

On 17 May 2017, the European Parliament published a press release announcing that it has objected to the list of high-risk third countries under MLD4 proposed by the European Commission on the grounds that it is inadequate.

The list is contained in the proposed Commission Delegated Regulation of 24 March 2017. The European Parliament had vetoed an earlier list drawn up by the Commission in January 2017.

The press release indicates that the MEPs indicated that the EU should have an independent, autonomous process for judging whether countries pose a threat of financial criminality rather than relying on the judgement of an external body.

A copy of the press release of the European Parliament can be accessed here.

(v) Wolfsberg Group guidance on PEPs

On 23 May 2017, the Wolfsberg Group published guidance on politically exposed persons ("**PEPs**"), together with a publication statement. The Wolfsberg Group is an association of thirteen global banks which aims to develop financial industry standards for AML, Know Your Customer ("**KYC**") and CTF policies.

The aim of the guidance is to assist financial institutions in handling the money laundering risks posed by PEPs. The guidance covers issues including:

- The definition of a PEP;
- The definitions of "close family members" and "close associates" of a PEP;
- The identification of a PEP and their close family members or close associates;
- Control by PEPs of organisations, state-owned entities and public sector bodies;
- Key components of the PEP risk management framework;
- Declassification of PEPs (that is, guidance on the time period that an individual should be regarded as a PEP after they have left the public function that gave rise to their initial categorisation); and
- PEP screening (that is the screening of customer names and associated details against PEP information during the customer relationship).

A copy of the guidance can be found here.

A copy of the publication statement can be found here.

(vi) ESAs consults on draft RTS in circumstances where a third country's law does not permit the application of group-wide AML and CTF policies and procedures under MLD4

On 31 May 2017, the Joint Committee of the ESAs published a consultation paper (JC 2017/25) on draft RTS on the measures credit institutions and financial institutions shall take to mitigate the risk of money laundering and terrorist financing where a third country's law does not permit the application of group-wide policies and procedures.

The Joint Committee held a public hearing on the draft RTS in London on 23 June 2017. Comments can be made on the draft RTS until 11 July 2017.

The Joint Committee will review the draft RTS in the light of responses received, and will then submit final draft RTS to the European Commission for endorsement.

The consultation paper may be accessed here.

(vii) Council of EU adopts its position on the proposed Directive on countering money laundering by criminal law

On 8 June 2017, the Council of the EU adopted its position on the proposed Directive on countering money laundering by criminal law (the "**proposed Eurocrime Directive**").

The aim of the proposed Eurocrime Directive is to ensure a harmonised and comprehensive criminalisation of money laundering offences across the EU, and also to ensure harmonisation in the level of sanctions for committing money laundering offences.

A copy of the general text of the proposed Eurocrime Directive can be found here.

The Council of the EU and the European Parliament will enter into negotiations on the final text as soon as the latter has decided on its position.

(viii) New system for the Financial Intelligence Unit of an Garda Síochána

On the 12 June 2017, an Garda Síochána's Financial Intelligence Unit ("**FIU's**") new system for reporting Suspicious Transaction Reports ("**STRs**") went live.

The new system is called goAML and is a secure online electronic reporting system which can be used by designated persons to submit STRs to the FIU. goAML is a global system developed by the UN and is already active in numerous other countries.

This new system replaced the previous paper method for reporting STRs to the FIU. However designated persons should be aware that they are still obliged to report STRs to the Irish Revenue Commissioners in addition to the FIU.

An Garda Síochána have published a goAML Entity Go-Live Pack which may be accessed here.

(ix) European Parliament to consider 5th EU Anti-Money Laundering Directive

On 12 June 2017, the European Parliament updated its procedure file for the proposed Fifth Money Laundering Directive ("**MLD5**"). The procedure file indicates that the Parliament will consider MLD5 at its 23 to 26 October 2017 plenary session. The European Commission published its MLD5 proposal in July 2016.

(x) ESA's publish draft RTS concerning the appointment and functions of a 'central contact point' under MLD4

On 26 June 2017, the ESA's published a final report on joint draft RTS on the criteria for determining the circumstances in which the appointment of a central contact point pursuant to Article 45(9) of MLD4 is appropriate and the functions of the central contact point.

The report may be accessed here.

(xi) European Commission publishes a supra-national assessment of the ML/TF risks in different sectors and financial products

On 26 June 2017, the European Commission published a report on the assessment of the risks of money laundering and terrorist financing affecting the internal market and relating to cross-border activities (COM(2017)340 (the "**Supra-national Risk Assessment Report**" or "**SNRA**").

The SNRA assesses the money laundering and terrorist financing risks of different sectors and financial products and is the first report to do so at a supranational level within the EU. It analyses the risks in the financial and non-financial sector and identifies the areas most at risk to money laundering and terrorist financing. The SNRA also includes recommendations to Member States on how to address risks that have been identified.

The SNRA is available for download here.

(xii) ESAs publish AML / CFT guidelines

On 26 June 2017, the ESA's published final guidelines under MLD4 on; (i) the factors credit and financial institutions should consider when assessing the money laundering ("**ML**") and terrorist financing ("**TF**") risk associated with individual business relationships and occasional transactions; and (ii) the extent of the simplified and enhanced customer due diligence which should be taken by firms in light of the ML / TF risk they have identified (the "**Guidelines**").

The Guidelines set out non-exhaustive factors and measures in relation to the following:

- What firms should consider when assessing the ML/TF risk associated with a business relationship or occasional transaction; and
- How firms can adjust the extent of their customer due diligence measures in a way that is commensurate to the ML/TF risk they have identified.

Competent authorities and firms should comply with these Guidelines by 26 June 2018.

A copy of the press release of the European Banking Authority can be accessed here.

The Guidelines may be accessed here.

(xiii) FATF publishes draft guidance on information sharing between financial institutions for consultation

On 29 June 2017, the Financial Action Task Force ("**FATF**") published draft guidance on information sharing between financial institutions for consultation (the "**Draft Guidance**").

According to the FATF, effective information-sharing is one of the cornerstones of a well-functioning AML/CFT framework. Constructive and timely exchange of information is a key requirement of the FATF standards and cuts across a number of FATF recommendations.

Accordingly, the intent of the Draft Guidance is to:

- Identify key challenges that inhibit sharing of information group-wide and between financial institutions not part of the same group;
- Articulate the FATF Standards on information-sharing regarding: a) group-wide AML/CFT programmes and within its context, sharing of information on suspicious transactions within the group, and how STR confidentiality and tipping-off provisions interact with such sharing; and b) between financial institutions not part of the same group;
- Highlight country examples of collaboration between data protection and privacy and AML/CFT authorities to serve mutually inclusive objectives;
- Provide country examples to facilitate sharing of information within group, between financial institutions not part of the same group; and of constructive engagement between the public and the private sectors; and
- Support the effective implementation of the AML/CFT regime, through sharing of information, both in the national and international context.

As set out in the Draft Guidance, the FATF advises that the guidance should be read in conjunction with a number of materials, including the FATF recommendations.

Before finalising the Guidance, the FATF has decided to consult with private sector stakeholders. Comments can be made on the Draft Guidance until 31 July 2017. As the FATF has not yet approved the Draft Guidance at this stage, the Guidance may be subject to further revisions and amendments.

The Draft Guidance is available for download here.

Data Protection

(i) Article 29 Working Party adopts Opinion on the Proposed Regulation for the ePrivacy Regulation

On 4 April 2017, the Article 29 Working Party (the "**Working Party**") adopted an Opinion (the "**Opinion**") on the Proposed Regulation for the ePrivacy Regulation (the "**Proposed Regulation**").
In the Opinion, the Working Party welcomed the proposal from the European Commission for an ePrivacy Regulation. It further welcomed the choice for a regulation as the regulatory instrument and expressed its support for the principled approach chosen in the Proposed

Regulation of broad prohibitions and narrow exceptions, and the targeted application of the concept of consent.

The Working Party also welcomed the expansion of the scope of the Proposed Regulation to include Over-The-Top ("**OTT**") providers and notes that it is positive that the Proposed Regulation clearly covers content and associated metadata and recognises that metadata may reveal very sensitive data.

However, four points of grave concern were identified by the Working Party in the Opinion and these relate to the following issues:

- The tracking of the location of terminal equipment;
- The conditions under which the analysis of content and metadata is allowed;
- The default settings of terminal equipment and software; and
- Tracking walls.

The Working Party is of the opinion that the Proposed Regulation would lower the level of protection enjoyed under the General Data Protection Regulation ((2016/679/EU) ("**GDPR**") in relation to these areas. In this regard, the Working Party provides recommendations that would ensure that the Proposed Regulation will guarantee the same, or a higher level of protection appropriate to the sensitive character of communications data.

The Opinion also notes other points of concern which relate to, for example, the protection of terminal equipment and direct marketing and identifies issues which need clarification to introduce more legal certainty for all stakeholders involved.

The Opinion is available for download here.

(ii) Article 29 Working Party issues consultation on GDPR guidelines on DPIAs

On 4 April 2017, the Working Party issued guidelines on the Data Protection Impact Assessment ("**DPIA**") and determining whether processing is "likely to result in a high risk" for the purposes of the GDPR (the "**Guidelines**") for public consultation.

While the GDPR does not formally define the concept of a DPIA, the Guidelines note that it is a process designed to describe the processing, assess the necessity and proportionality of a processing and to help manage the risks to the rights and freedoms of natural persons resulting from the processing of personal data. While not mandatory for every processing operation, Article 35(1) of the GDPR provides that a DPIA is required when the processing is "*likely to result in a high risk to the rights and freedoms of natural persons*". Article 35 also sets out a non-exhaustive list of processing activities which require a DPIA.

The Guidelines aim to clarify the relevant provisions of the GDPR in order to help controllers to comply with the law and to provide legal certainty for controllers who are required to carry out a DPIA.

More specifically, the Guidelines discuss the following issues and provide recommendations on:

- What a DPIA addresses;
- The processing operations that are subject to a DPIA;
- How a DPIA should be carried out; and
- When the supervisory authority shall be consulted.

Annex 1 to the Guidelines sets out a list of links to examples of existing DPIA frameworks and Annex 2 outlines the criteria for an acceptable DPIA.

The Guidelines were open to public consultation until 23 May 2017. The Working Party will consider the comments received with a view to adopting a final version.

The Guidelines are available for download here.

(iii) Article 29 Data Protection Working Party adopts final Guidelines relating to GDPR

On 5 April 2017, the Working Party adopted final GDPR guidelines on the following:

- Data Protection Officers ("**DPOs**");
- The right to 'Data Portability'; and
- The Lead Supervisory Authority.

1. *Guidelines on DPO*

Under Article 37 of the GDPR, it is mandatory for certain controllers and processors to appoint a DPO. The GDPR sets out the conditions for the appointment of the DPO, his or her position and the tasks of the DPO.

The aim of these guidelines is to clarify the relevant provisions of the GDPR in order to help controllers and processors to comply with the law and also to assist DPOs in their role. More specifically, the Working Party provides guidance with regard to the criteria and terminology used in Article 37(1) of the GDPR including:

- Public authority or body;
- Core activities;

- Large scale; and
- Regular and systematic monitoring.

In addition, the guidelines provide best practice recommendations, building on the experience gained in some EU Member States. The annex to the guidelines also sets out a number of Q&A that organisations may have regarding these new requirements.

The Working Party will monitor the implementation of these guidelines and may update them with further details as appropriate.

The guidelines are available for download here.

2. Guidelines on the Right to Data Portability

Article 20 of the GDPR creates a new right to data portability which allows data subjects to receive the personal data that they have provided to a controller in a structured and machine-readable format and to transmit those data to another data controller.

The guidelines provide guidance on how to interpret and implement the right to data portability, clarifying the conditions under which the right applies taking into account the legal basis of the data processing and the fact that this right is limited to personal data provided by the data subject. It further provides concrete examples and criteria to explain the circumstances in which this right applies.

The guidelines also make a number of recommendations, one such recommendation being that industry stakeholders and trade associations work on a common set of interoperable standards and formats to deliver the requirements of the right to data portability.

The guidelines are available for download here.

3. Guidelines on Identifying Lead Supervisory Authority

The GDPR provides for the designation of a lead supervisory authority where cross-border processing is carried out. The lead supervisory authority will have primary responsibility for dealing with a cross-border data processing activity and will coordinate any investigation involving the 'concerned' supervisory authorities. The guidelines aim to provide guidance on identifying the lead supervisory authority and deals with other relevant issues such as the role of the supervisory authority 'concerned', local processing and companies not established within the EU.

The guidelines are available for download here.

(iv) EU – U.S. Joint Financial Regulatory Forum Issues Joint Statement

On 6 April 2017, EU and U.S. participants (the "**participants**") in the EU – U.S. Joint Financial Regulatory Forum ("**Forum**") published a joint statement. The participants met on 28 and 29 March 2017 in Brussels to allow the exchange of views on financial regulatory developments as part of their ongoing regulatory dialogue.

Among the matters discussed were the outlook for financial regulatory reforms and future priorities; cooperation in relevant global fora; and progress in implementing measures in their respective jurisdictions consistent with the G20 reform agenda.

In relation to data protection, the U.S. participants continued to raise issues in relation to the transfer of data for regulatory, supervisory and enforcement purposes and to data protection in light of the entry into application of the GDPR in May 2018.

In relation to insurance, participants provided updates on the progress of internal proceedings regarding the final legal text of the EU – U.S. bilateral agreement on prudential measures regarding insurance and reinsurance. EIOPA provided a presentation on insurance and reinsurance in a low interest rate environment.

The next Forum meeting will take place in Washington, D.C. in July 2017.

The full joint statement may be accessed here.

(v) Data Protection Commissioner publishes guidance on Access Rights and Responsibilities

On 7 April 2017, the Data Protection Commissioner (the "**DPC**") published a guide (the "**Guide**") on access rights and responsibilities which is aimed both at individuals and organisations. The aim of the Guide is to provide clarity around the rights and obligations that Access Requests cover and is designed to walk individuals through the process of making an access request and organisations through the process of responding to one.

The Guide follows a question and answer format and covers a number of areas including:

- Accessing personal data;
- Establishing if an organisation holds personal data about an individual;
- Applying for access to a copy of your personal data;
- Exemptions and restrictions to the Right of Access;
- Applying to have personal data corrected, deleted or restricted;
- Making a complaint to the data protection commissioner; and

- The effect the General Data Protection Regulations will have on Access Requests.

The Guide may be accessed here.

(vi) Data Protection Commissioner publishes Annual Report for 2016

On 11 April 2017, the DPC published its Annual Report for 2016 (the "**Report**"). The Report highlights the activities and achievements of the DPC and noted the volume of complaints being handled which reflects the growing awareness of, and concern for, data protection matters against individuals and organisations.

Some of the highlights of the Report include:

- The DPC dealt with 15,335 queries by email, 16,744 calls be telephone and 1,150 queries by post (up on 2015 figures);
- 1,479 complaints were investigated, with the largest single category of complaints continuing to be access requests (56%);
- 1,438 complaints were concluded in 2016, up from 1,015 in 2015;
- 26 'Right to be Forgotten' complaints were received, with 6 being upheld, 15 rejected and 5 currently still under investigation;
- The majority of complaints were amicably resolved; however a record number of formal decisions (59) were issued;
- 2,224 valid data-security breaches were recorded;
- Over 50 in-depth audits and inspections carried out, including of state agencies;
- 9 successful prosecutions for electronic marketing offences;
- Establishment of the new Multinationals and Technology team to lead on supervision of multinationals;
- Increased proactive engagement with other EU data protection authorities in preparing guidance on the General Data Protection Regulation;
- Over 100 face-to-face meetings were held with multinational companies;
- 2 successful prosecutions against private investigators for breaches in respect of access rights;

- 1,170 public and private sector consultation projects dealt with in 2016, up from 860 in 2015; and

- Commencement of intensive preparatory work in advance of GDPR.

The Annual Report may be accessed here.

(vii) General Scheme of Data Protection Bill 2017

On 12 May 2017, the Department of Justice and Equality published the General Scheme of the Data Protection Bill 2017 (the "**Data Protection Bill**").

The Data Protection Bill, amongst other things:

- Gives further effect to the GDPR including:

    - Providing for the imposition of fines on public authorities for breaches of data protection law where such authorities are acting in competition with private operators;

    - Specifying a digital age of consent for purposes of Article 8 GDPR;

    - Providing for a regulation making power to underpin the processing of sensitive data for reasons of substantial interest;

    - Providing for a more general basis for processing of personal data relating to criminal convictions and offences, subject to appropriate safeguards; and

    - Providing for a regulation making power to avail of the power to appoint a DPO if necessary and justified and where not already provided for in the GDPR.

- Transposes the Data Protection (Law Enforcement) Directive (2016/680/EU) into national law which concerns the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection, or prosecution of criminal offences, and on the free movement of such data; and

- Replaces the Data Protection Commissioner with a Data Protection Commission with the possibility of up to three Commissioners depending on future workload.

The Data Protection Bill is subject to pre-legislative scrutiny and is likely to change before it is enacted.

A press release by the Department of Justice and Equality on the Data Protection Bill may be accessed here.

The Data Protection Bill may be accessed here.

(viii) European Commission publishes Q&A on Data Protection Reform Package

On 24 May 2017, the European Commission published a set of questions and answers ("**Q&A**") on the data protection reform package which entered into force in May 2016 and will be applicable from May 2018. The package includes the GDPR and the Data Protection (Law Enforcement) Directive (2016/680/EU) for the police and criminal justice sector.

The Q&A's cover a number of issues including:

- The changes that will occur under the GDPR;
- The benefits for citizens and businesses;
- Specific protection for children;
- The benefits for SMEs;
- The penalties that will be incurred by a business for breaking the new data protection rules;
- How the GDPR protects personal data in the event of a cyberattack;
- The operation of the new rules in practice;
- The impact the Data Protection (Law Enforcement) Directive will have on enforcement operations; and
- The affect the Data Protection (Law Enforcement) Directive will have on citizens.

The Q&As may be accessed here.

(ix) Data Protection Commissioner launches information campaign on GDPR

On 25 May 2017, the DPC launched a GDPR focused website (www.GDPRandYou.ie) to assist businesses, in particular SMEs, with their preparations for the introduction of the GDPR. The new website will include guidance material on the GDPR. According to a study for the DPC conducted by Amárach Research, only 14% of Irish SMEs have begun preparing for the introduction of the GDPR with one year to go. In a press release relating to the launch, Helen Dixon stated that "twelve months is not a long time and nobody can afford to delay".

The DPC GDPR website can be accessed here.

A related press release by the DPC may be accessed here.

(x) Data Protection Commissioner delivers speech at Data Summit Dublin 2017

On 15 June 2017, the DPC published a speech delivered by the Data Protection Commissioner, Helen Dixon, at the Data Summit Dublin 2017.

Ms Dixon covered a number of issues in her address including:

- Technology driving change – some downsides, some benefits;
- Binary arguments about technology being good or bad;
- Role of data protection authorities;
- Context in data protection analysis;
- Context for individual in making choices; and
- The GDPR.

Ms Dixon's full speech may be accessed here.

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