

Insurance Quarterly Legal and Regulatory Update

Period covered:
1 April 2018 – 30 June 2018

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▣ INSURANCE QUARTERLY LEGAL AND REGULATORY UPDATE

Solvency II

(i) **Central Bank publishes Guidance on the Approval and Supervision of Special Purpose Vehicles under Solvency II**

On 4 April 2018, the Central Bank of Ireland (the “**Central Bank**”) published Guidance on the Approval and Supervision of Special Purpose Vehicles (“**SPVs**”) under Solvency II (the “**Guidance**”).

The European Union (Insurance and Reinsurance) Regulations 2015 transposed the Solvency II Directive into Irish law. Commission Delegated Regulation 2015/35 and Commission Implementing Regulation 201/462 set out specific rules for SPVs under Solvency II related to authorisation, system of governance, supervisory reporting and solvency requirements.

The Guidance intends to assist both single and multi-arrangement SPVs comply with the requirements under the Solvency II framework. To this end, the Guidance provides detail of the expectations of the Central Bank in respect of the compliance of SPVs with the Solvency II legislation set out above.

The Guidance is available [here](#).

(ii) **European Commission publishes report on the supervision of group (re)insurance undertakings and the transitional period for IORPs**

On 5 April 2018, the European Commission published a report on the application of Solvency II as regards the supervision of group insurance and reinsurance undertakings, and the transitional period for institutions for occupational retirement provision business (“**IORPs**”). The Commission is required under Solvency II to report to the European Parliament and the Council of the European Union on both of these topics, and this report fulfils these two (unrelated) requirements in a single document.

Regarding the group supervision regime, the report concluded that only one area required legislative amendment at this stage. The report identified divergences in the supervision and approval of group internal models between Member States and that the European Insurance and Occupational Pensions Authority (“**EIOPA**”) requires enhanced powers to bring about convergence. However, the report noted that the introduction of a legislative proposal to amend Solvency II so as to mitigate this issue has already been introduced as part of the Commission’s proposals to reform the European System of Financial Supervision. The proposal, gives EIOPA a greater role in ensuring supervisor convergence in the area of internal model applications and information sharing.

Regarding the transition period for IORPs operated by life insurers, the report concluded that the Commission may decide to extend it, however this decision would be made nearer the end of the current transition period (end 2022).

The report is available [here](#).

(iii) Central Bank issues Dear CEO letter on Solvency II Regulatory Reporting

On 16 April 2018, the Central Bank issued a Dear CEO letter addressing regulatory reporting under Solvency II by (re)insurance undertakings. The letter sets out the concerns of the Central Bank as regards the accuracy of submissions, following their analysis of reported data by insurance firms and a thematic onsite inspection into the reporting process.

The letter noted that firms are obliged to provide complete and accurate information to the Central Bank and emphasised the importance of implementing a robust regulatory reporting framework. The letter went on to set out some of the reasons that undertakings are not Solvency II compliant, which include:

- ❑ Some undertakings failed to meet the basic requirement of having a Supervisory Reporting policy in place;
- ❑ Some Boards are signing off on only some of the annual QRTs;
- ❑ There has been minimal oversight or active engagement by the Risk and Compliance function of the regulatory reporting process;
- ❑ Key control points identified in the regulatory reporting process are not being set out in detailed process documents and evidence of control checks are not always recorded. Such documentation is important because directors must attest to the accuracy of the annual returns, and if there is a lack of evidence of the control checks working as intended the directors cannot use the assurance process as the basis for attesting to the accuracy of reporting; and
- ❑ Error management, particularly processes for identifying repeat errors, requires improvement.

Examples of good and poor practices are set out in the Appendix to the letter.

The Dear CEO letter is available [here](#) and a press release providing context to the letter is available [here](#).

(iv) EIOPA publishes updated Solvency II Q&A

During the period 1 April 2018 to 30 June 2018, EIOPA published updated Questions and Answers (“Q&As”) on the following:

- ▣ (European Union) No 2015-2450 templates for the submission of information to the supervisory authorities;
- ▣ (European Union) No 2015-2011 with regard to the lists of regional governments and local authorities;
- ▣ (European Union) No 2015-2451 with regard to internal models;
- ▣ (European Union) No 2015-2452 with regard to the procedures, formats and templates of the solvency and financial condition report;
- ▣ (European Union) 2016-97 on insurance distribution;
- ▣ Answers to Questions on Commission Delegated Regulation (European Union) 2015/35 supplementing Directive 2009/138;
- ▣ Answers to questions on Commission Delegated Regulation (European Union) 2015/35 Decisions;
- ▣ Guidelines on contract boundaries;
- ▣ Guidelines on application of outwards reinsurance;
- ▣ Answers to Questions on Guidelines on application of outwards reinsurance;
- ▣ Answers to Questions on Guidelines on contract boundaries;
- ▣ Answers to Questions on Guidelines on group solvency;
- ▣ Answers to Questions on Guidelines on Health Catastrophe Risk Sub-Module;
- ▣ Answers to Questions on Guidelines on own risk and solvency assessment;
- ▣ Answers to Questions on Guidelines on reporting and public disclosure;
- ▣ Answers to Questions on Directive 2009-138; and
- ▣ Answers to Questions on Risk-free Rate Technical Information such as VA Calculation; General Questions, Financial Market data, Extrapolation, Credit and currency adjustments.

The Q&A may be accessed [here](#).

(v) Commission Implementing Regulations on mapping credit assessments of external credit assessment institutions under Solvency II published in the Official Journal of the European Union

On 25 April 2018, two Commission Implementing Regulations were published in the Official Journal of the European Union:

☐ The Commission Implementing Regulation (EU) 2018/634 will amend Implementing Regulation (EU) 2016/1799 by updating the mapping tables which specify the correspondence between the credit risk assessments of external credit assessment institutions (“**ECAIs**”) and the credit quality steps set out in Article 136(1) of the Capital Requirements Regulation. It will come into force on 15 May 2018 and is available [here](#); and

☐ The Commission Implementing Regulation (EU) 2018/633 will amend Implementing Regulation (EU) 2016/1800 which lays down implementing technical standards (“**ITS**”) relating to the allocation of ECAIs to an objective scale of credit quality steps in accordance with Article 109(a)(1) of the Solvency II Directive and updates the Annex by allocating the credit assessments of five newly registered or certified ECAIs the scale of credit quality steps and removed the credit assessment of one of the ECAIs which was de-registered. It too will come into force on the 15 May 2018 and is available [here](#).

(vi) The European Working Group issues updated Solvency II Tripartite Data Exchange template

On 7 May 2018, the European Working Group (“**EWG**”) issued a new standard Solvency II Tripartite Data Exchange template (the “**TPT V4.0**”) to facilitate the exchange of information between Insurers and Asset Managers.

The first version of the template TPT V3, was formally issued in October 2015 and has been widely adopted across Europe with a review of TPT V3 completed in April.

The accompanying press release and the new version TPT V4.0 can be accessed [here](#).

(vii) The European Commission requests information from EIOPA on long-term insurance and reinsurance activities under Solvency II

On 17 May 2018, the European Commission published a letter it sent to EIOPA requesting information on the impact of Solvency II on long-term insurance and reinsurance activities. The Solvency II Directive sets out two review clauses for 2020 covering the standard formula for capital requirements and the long-term guarantee (“**LGTs**”) measures.

EIOPA submitted annual reports on the LGT measures to the European Commission in 2016 and 2017. In addition to the information already provided the European Commission identified other areas it would like further information on, to help it assess the appropriateness of the Solvency II Directive by 2020. Its request for information covers the use of LTG measures by insurance and reinsurance undertakings, the characteristics and valuation of insurers' liabilities and evidence on insurers' behaviour as long-term investors.

In the letter the European Commission invites EIOPA to provide the information requested by 16 December 2019 and asks EIOPA to share its timetable for the work and will follow up with a call for advice closer to the 1 January 2021 review deadline.

A copy of the letter can be view [here](#) with the request for information viewed [here](#).

(viii) ECB publishes opinion on a proposal for a Regulation amending the ESMA Regulation and on a proposal for a Directive amending Solvency II and MiFID II

On 17 May 2018, the European Central Bank (“**ECB**”) published an opinion, dated 11 May 2018, on a proposed Regulation amending the ESMA Regulation and related legal acts and a proposed Directive amending Solvency II and MiFID II (the “**Opinion**”). The proposed legislation forms part of a package of proposals set out by the European Commission to reform the European System of Financial Supervision.

The ECB expressed its support of the proposed Regulation’s aim to contribute to the development of the Capital Markets Union (“**CMU**”), noting the single supervision of at least specific market segments needs to be envisaged in order to ensure consistent enforcement across the European Union. Furthermore, the ECB recommended that consideration be given to the role of the ECB as supervisor of credit institutions under the Single Supervisory Mechanism Regulation.

The ECB went on to make a number of specific observations regarding the role of the ECB in central counterparty (“**CCP**”) matters, including support of the revision of ESMA’s governance structure and the inclusion of an ECB representative as a permanent non-voting member of ESMA’s Board of Supervisors.

The Opinion is available [here](#).

ESMA advises that the opinion be read in conjunction with the ECB Opinion of 2 March 2018 on the proposed Regulation amending the ESRB Regulation and the ECB Opinion of 11 April 2018 on the proposed Regulation amending the EBA Regulation, available [here](#) and [here](#) respectively.

(ix) Implementing Regulation on technical information for calculation of technical provisions and basic own funds for the second quarter of 2018 reporting under Solvency II published in Official Journal of the European Union

On 18 May 2018, the Commission Implementing Regulation that lays down technical information for the calculation of technical provisions and basic own funds for reporting for the second quarter of 2018 under the Solvency II Directive was published in the Official Journal of the European Union.

The European Commission adopted the Implementing Regulation on 4 May 2018 which entered into force on 19 May 2018 and applies from 31 March 2018.

A copy of the Commission Implementing Regulation (EU) 2018/730 can be viewed [here](#).

(x) EIOPA publish report regarding comparative study on market and credit risk modelling under Solvency II

On 22 May 2018, EIOPA published a report detailing the findings of its first comparative study on market and credit risk modelling.

The comparative study of market and credit risk in internal models was undertaken between 2016 and 2017. The aim of the study was to develop supervisory tools and foster common supervisory practices. This report summarises the key findings from this study and sets out the supervisory initiatives being taken following the conclusions of this study.

The overall results show significant variations in asset model outputs. This may be attributable to model specificities of which national competent authorities are already aware, however it may also indicate a certain need for further supervisory scrutiny. EIOPA notes that this study is a first step in an ongoing process of monitoring and comparing internal market and credit risk models, and to this end EIOPA has decided to perform regular annual studies to further develop supervisory tools and foster consistency of supervisory approaches.

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

(xi) European Commission adopts Delegated Regulation amending Solvency II Delegated Regulation to ensure consistency with Securitisation Regulation

On 1 June 2018, the European Commission published the Delegated Regulation it adopted to amend the Solvency II Delegated Regulation 2015/35 (“**Solvency II Regulation**”).

The adopted Delegated Regulation was prompted by the STS Regulation (“**Regulation**”) which entered force in January 2018 and is set to apply from January 2019. The Regulation will amend the Solvency II Directive and consequently a number of changes to

the Solvency II Regulation will be required to ensure consistency with this new piece of legislation. The changes include:

- ▣ Aligning the definitions used in the Solvency II Regulation with those in the STS Regulation;
- ▣ Certain provisions of the Solvency II Regulation will need to be repealed due to changes introduced in the STS Regulation such as the removal of the Commission's power to adopt rules related to risk retention and due diligence requirements under Solvency II Directive and related provisions in Solvency II Regulation to ensure insurers are not subject to different requirements under the different legislations; and
- ▣ Existing provisions of Delegated Regulation on calibrations for 'type 1 securitisations' will be replaced by more risk sensitive calibrations for STS securitizations covering all possible tranches that meet particular additional requirements to minimize risks.

The next steps involve both the European Parliament and Council adopting the Delegated Regulation and being published in the Official Journal of the European Union. The text of the Delegated Regulation provides that it will become effective from 1 January 2019.

The text of the Delegated Regulation is available [here](#).

(xii) EIOPA publishes monthly technical information for Solvency II relevant risk free interest rate term structures

EIOPA intends to publish the technical information in relation to risk free interest rate ("RFR") term structures on a monthly basis to ensure consistent calculation of technical provisions for (re)insurance obligations across the European Union.

In the second Quarter, EIOPA published the RFR as follows:

- ▣ With reference to the end of March 2018 on 6 April 2018;
- ▣ With reference to the end of April 2018 on 7 May 2018; and
- ▣ With reference to the end of May 2018 on 6 June 2018.

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](#).

(xiii) Council of the European Union issues Presidency progress report on work in the Ad-Hoc Working Party on Strengthening the Banking Union

On 12 June 2018, the Council of the European Union published a Presidency progress report on work in the Ad-Hoc Working Party on Strengthening the Banking Union.

The report noted that the Council of the European Union continues to work constructively at a technical level on the Commission proposal for the establishment of a European Deposit Insurance Scheme (“**EDIS**”) while monitoring progress on risk reduction and other measures outlined in the Roadmap adopted by the Council of the European Union in June 2016.

In particular, the Council of the European Union:

- ▣ Made progress on discussions on the package of proposals for risk reduction measures;
- ▣ Made progress on measures to tackle non-performing loans in Europe; and
- ▣ Continued the work of the Task Force on Coordinated Action related to the backstop for the Single Resolution Fund.

The Progress Report is available [here](#).

A revised version of the report, dated 15 June 2018, was published following the meeting of the Committee of Permanent Representatives (“**COREPER**”) on 14 June, available [here](#).

(xiv) EIOPA publishes Solvency II statistics on the European insurance sector

On 21 June 2018, EIOPA published new statistical information from insurance undertakings and groups on the European insurance sector based on Solvency II regulatory reporting for the fourth quarter of 2017.

The statistical information contains detailed statistics and an aggregated country level information about:

- ▣ Balance sheet;
- ▣ Own funds;
- ▣ Capital requirements;
- ▣ Premiums, Claims and expenses; and
- ▣ Asset exposures.

The EIOPA insurance statistics can be accessed [here](#).

(xv) European Commission issues request to EIOPA for report on group supervision and passporting services under Solvency II

On 21 June 2018, EIOPA published a letter received from the European Commission which formally requests them to prepare a report on the benefit of enhancing group supervision and capital management under Solvency II.

The Commission aims to identify challenges and diverging practices in group supervision, as well as in the supervision of freedom of establishment and freedom to provide services. EIOPA has been invited to provide its report by 1 November 2018.

The letter, dated 7 June 2018, is available [here](#) and an accompanying annex to the letter is available [here](#) which provides more detail regarding the scope of the request.

(xvi) The Central Bank publishes its Consultation Paper 122 on ‘Changes to the Domestic Actuarial Regime and Related Governance Requirements under Solvency II’

On 22 June 2018, the Central Bank published its Consultation Paper 122 on ‘*Changes to the Domestic Actuarial Regime and Related Governance Requirements under Solvency II*’ (“**CP 122**”).

The Domestic Actuarial Regime introduced specific domestic requirements regarding the actuarial function and related governance arrangements within (re)insurance undertakings and applies to all (re)insurance undertakings subject to Solvency II. The Central Bank is proposing further amendments to the Domestic Actuarial Regime, relating to:

▣ The governance of With-Profits funds:

This proposed amendment, is to introduce new requirements for the governance of insurance With-Profits funds to ensure continued protection of fund members and improved risk management of With-Profits funds with the expected increase in volume of this business in Ireland; and

▣ The format of the Actuarial Opinion on the Technical Provisions (“AOTP”) as outlined in the Domestic Actuarial Regime:

This provides for certain amendments to the format of the AOTP that is outlined in tracked changes in the Appendix of the Domestic Actuarial Regime. The proposed amendments to the AOTP is to clarify the level of reliance the Head of Actuarial Function (“**HoAF**”) is placing on others and whether there are material limitations within the calculation of the Technical Provisions (“**TPs**”) and any recommendations for improvements.

Should the amendments to the Domestic Actuarial Regime proceed, the following sections of the Domestic Actuarial Regime will be amended:

- ☐ Section 1 – Introduction;
- ☐ Section 3 - Sector Specific Requirements;
- ☐ Section 4 - Exemptions from the Requirements; and
- ☐ Appendix - Format of AOTP.

The Central Bank also issued an ‘*Addendum to the Domestic Actuarial Regime and Related Governance Requirements under Solvency II 2015*’ (the “**Addendum**”) on 4 May 2018, which provides for the application of the Domestic Actuarial Regime to third country (Non-EEA) insurance undertakings wishing to establish a branch within Ireland.

The updated Domestic Actuarial Regime will be imposed upon (re)insurance undertakings as a condition of authorisation pursuant to the European Union (Insurance and Reinsurance) Regulations 2015.

A copy of CP 122 can be accessed [here](#).

The Addendum is available [here](#).

(xvii) European Commission speech on Solvency II review

On 26 June 2018, Valdis Dombrovskis, European Commissioner for Financial Stability, Financial Services and Capital Markets Union, made a keynote speech on the review of Solvency II at the Insurance Europe conference, held in Brussels.

Commissioner Dombrovskis addressed the 2018 review of Solvency II, noting that the Commission is currently reviewing the input from EIOPA, including its impact assessment and the positions of stakeholders. The Commission has taken a preliminary view on some of the items in EIOPA’s advice, for example, that it is appropriate at this time to revise some of the rules on deferred taxes in Solvency II.

Commissioner Dombrovskis also addressed the 2020 review of the Directive. Noting that preparatory work was already in progress, he noted that the Directive will be reviewed broadly, as opposed to a focus on long-term guarantee measures, in response to sector feedback.

The text of the speech is available [here](#).

(xviii) Insurance Europe Press Release on Solvency II survey

On 26 June 2018, Insurance Europe issued a press release on the results of its survey of insurers across Europe. The survey sought the views of insurers regarding the effect on their business from the 2016 Solvency II Regulation. Points to note include:

- ▣ Over three quarters of respondents have seen a positive effect from the European Union's 2016 Solvency II regulation on their risk management and governance practices and on their management of assets and liabilities;
- ▣ 58% of respondents offering long-term savings products with guarantees said that Solvency II has had a negative effect on those products; and
- ▣ 48% of respondents said that Solvency II has led them to invest less than optimum amounts in equities, long-term bonds, private placements or unrated debt.

Insurance Europe concluded that the findings provide further evidence that insurers are under pressure to shift risk to customers and to withdraw from long-term guaranteed savings products and that Solvency II is affecting the ability of insurers to invest long-term in the economy at a time when the European Commission is seeking to boost sustainable European Union growth.

The press release is available [here](#).

International Association of Insurance Supervisors (“IAIS”)

(i) IAIS publishes draft issues paper for consultation on climate change risks to insurers

On 12 March 2018, the International Association of Insurance Supervisors (“IAIS”) published a draft issues paper on Climate Change Risks to the Insurance Sector. The paper was prepared alongside the Sustainable Insurance Forum (“SIF”). The IAIS welcomed feedback on the paper until 29 April 2018.

The objective of this paper is to raise awareness among insurers and supervisors of the challenges presented by climate change. It addresses how climate change may affect the insurance sector, gives examples of current material risks and addresses the current and potential supervisory approaches for addressing these risks.

The paper notes that although Insurance Core Principles (“ICPs”) do not specifically address climate change, they provide a general basis for the identification, assessment and supervision of climate risks within the insurance sector.

The paper concludes by stating that insurance supervisors should increase their understanding of climate risk and develop supervisory capabilities in order to evaluate the sector's actions to achieve climate resilience.

The draft issues paper is available [here](#) and an accompanying press release is available [here](#).

(ii) Ohio Department of Insurance joins the IAIS International Information Exchange Agreement

On 26 April 2018, the Chair of the Executive Committee of IAIS announced that the Ohio Department of Insurance has become a member of the IAIS' Multilateral Memorandum of Understanding ("MMoU").

The MMoU is a global framework for cooperation and information exchange among insurance supervisors and sets a minimum standard to which signatories must adhere. All applicants are subject to review and approval by an independent team of IAIS Members. Through membership in the MMoU supervisors are able to exchange relevant information and provide assistance to other signatories which promotes financial stability and sound supervision of cross-border insurance operations for the benefit and protection of consumers.

A copy of the press release can be viewed [here](#) and the list of other MMoU signatories can be accessed [here](#).

(iii) IAIS publishes paper on index-based insurances particularly in inclusive insurance markets

On 18 June 2018, IAIS published an issues paper on index based insurances, particularly in inclusive insurance markets.

Index-based insurances are insurance contracts in which a claim is defined with reference to a pre-determined index. This paper focuses mainly on weather-related and natural catastrophe event risks, provides background on this product and identifies related regulatory and supervisory issues and challenges. The paper, in particular, addresses the following topics:

- ▣ How the product is designed affects the role of the policyholder and expectations of the end customer;
- ▣ The roles of stakeholders not usually seen in conventional insurance such as government agencies and ministries;
- ▣ Legal certainty, insurable interest and the nature of the product as insurance; and
- ▣ Consumer protection issues, e.g. the proper consideration of basis risk.

The issues paper, dated 18 June 2018, is available [here](#).

(iv) IAIS launches consultation on Composition and Role of the Board

On 29 June 2018, IAIS published its Draft Application Paper on the Composition and Role of the Board. This Application Paper aims to provide additional material to help with the practical interpretation and application of selected standards and guidance of Insurance Core Principle (“ICP”) 5 (Suitability of Persons) and ICP 7 (Corporate Governance).

This Application Paper applies to the Board as referred to in the context of the ICPs (in particular ICP 7), which is a body of elected or appointed individuals ultimately responsible for the governance and oversight of the insurer, regardless of the Board structure.

The IAIS has invited feedback from stakeholders on the proposal from stakeholders until 13 August 2018, which will enable the IAIS to further develop the paper for finalisation.

A public background session will be held via teleconference on 16 July 2018 to discuss the draft Application Paper and to receive public feedback which can be found [here](#) with the Application Paper being available [here](#).

(v) IAIS launches consultation on Supervision of Insurer Cybersecurity

On 29 June 2018, IAIS published for consultation a draft Application Paper on Supervision of Insurer Cyber Security. The aim of the Application Paper is to provide further guidance to supervisors seeking to develop or enhance their approach to supervising the cyber risk, cybersecurity, and cyber resilience of insurers.

Insurers may also use this Application Paper to assist in developing and implementing good cyber security practices in their organisations. The IAIS has invited feedback from stakeholders on the draft Application Paper until 13 August 2018, which will enable the IAIS to further develop the paper for finalisation.

The Application Paper is available [here](#).

(vi) IAIS launches consultation on revised ICPs 6 (Changes in Control and Portfolio Transfers) and 20 (Public Disclosure)

On 29 June 2018, IAIS published for consultation revised ICPs 6 (Changes in Control and Portfolio Transfers) and 20 (Public Disclosure):

▣ ICP 6 provides guidance as regards when a supervisor assesses and decides on proposals to acquire significant ownership of, or an interest in, an insurer that results in a person (legal or natural), directly or indirectly, alone or with an associate, exercising control over the insurer; and for portfolio transfers.

▣ ICP 20 provides guidance as regards when a supervisor requires insurers to disclose relevant and comprehensive information on a timely basis in order to give policyholders

and market participants a clear view of their business activities, risks, performance and financial position.

The IAIS is seeking feedback on revised ICP 6 and 20 until 28 August 2018, which will enable the IAIS to further develop the material for finalisation.

The revised ICPs are available at this [link](#).

European Insurance and Occupational Pensions Authority (“EIOPA”)

(i) EIOPA opinion on European Commission request to ESAs as regards reporting

On 4 April 2018, the Insurance and Reinsurance Stakeholder Group (“IRSG”) of the European Insurance and Occupational Pensions Authority (“EIOPA”) issued an opinion on the European Commission’s request to the ESAs to report on the cost and past performance of the main categories of retail investment, insurance and pension products.

In its opinion, the IRSG welcomed the proposal to introduce greater transparency of past performance and costs for retail financial services products through recurrent reporting as a means of attracting retail investors to capital markets investments on a widespread and sustained basis.

The IRSG noted the complexity of the reporting, and supported the use of existing regulation as a starting point for the establishment of the methodologies to be used in calculating and reporting on cost and past performance. The IRSG emphasised that the preparation of information to support this task should not create significant additional costs for contributing firms, and supported the use by firms of existing information sources as far as possible in fulfilling this requirement.

The report is available [here](#).

(ii) OPSG publishes Feedback Statement to the EIOPA Questionnaire on the Consumer Trends Report 2018

On 5 April 2018, EIOPA published a Feedback Statement by the EIOPA Occupational Pensions Stakeholder Group (“OPSG”) in response to the EIOPA Consumer Trends Report 2018.

The Feedback Statement provides informal input to the work on the Consumer Trends Report on the following topics:

- ▣ How the demand for and/or offer of occupational and personal pension plans and products has increased / decreased / remained unchanged, during 2017;
- ▣ Whether pension schemes are taking sustainable investing factors into account in the course of their investment practices;

- ▣ Stakeholder views on how the Pan-European Pension Products (“PEPP”) will impact the pensions market; and
- ▣ Whether developments have been observed regarding the type, quality and format of the information provided to individuals.

The OPSG Feedback Statement is available [here](#).

Separately the Insurance and Reinsurance Stakeholder Group (“IRSG”) of EIOPA published a feedback Statement on 5 April 2018 in response to the EIOPA’s Consumer Trends Report 2018.

The Feedback Statement from the IRSG observed:

- ▣ How the demand for and/or offer of insurance products has increased / decreased / remained unchanged, during 2017;
- ▣ Stakeholder views on changes to insurance business models arising from increasing quantity and quality of data available for insurance undertakings for the purposes of risk assessment and their impact on consumers;
- ▣ How the emergence of new business models impact insurance undertakings, intermediaries, consumers or regulators;
- ▣ Stakeholder views on the emergence of insurance products based on the in-vehicle data derived from connected vehicles and how those products impact insurance undertakings, intermediaries, consumers or regulators; and
- ▣ How social media is used by insurance undertakings and what are the benefits and risks for consumers and (re)insurance undertakings.

The IRSG feedback statement is available [here](#).

(iii) EIOPA publishes report on oversight activities in 2017

On 18 April 2018, EIOPA published a report on its oversight activities in 2017. Under the Solvency II Directive, EIOPA is obliged to deliver an annual report to the European Parliament on its experience of supervisory activities. The oversight activities addressed in the report include the following:

- ▣ Balance sheet reviews, the purpose of which is to gain insight and raise awareness of national insurance sectors;
- ▣ The issue of three supervisory opinions, in cases where EIOPA identified inconsistencies in approaches to supervision;

- ▣ Participation in colleges of supervisors, with the aim of improving consistency in supervisory approaches;
- ▣ The establishment of cooperation platforms between EIOPA and relevant national supervisory authorities;
- ▣ Independent assessment of troubled undertakings; and
- ▣ Peer reviews on the specific activities of national supervisory authorities, to strengthen the consistency in the outcome of supervisory actions.

The report noted that EIOPA's priorities for 2018 will continue to work with national supervisory authorities with a particular focus on cross-border activities. EIOPA will also focus on authorisations of fitness and probity and, working in cooperation with national supervisory authorities, will increasingly support reviews of vulnerable business models

The report is available [here](#).

(iv) EIOPA provides update on conduct of business supervision strategy

On 23 April 2018, EIOPA provided an update on its strategy for 'conduct of business supervision' by way of a document titled '*EIOPA's Strategy for Conduct of Business Supervision – Next Steps*' ("**Update**").

The Update provides information on the operation and implementation of the strategy, EIOPA's conclusions drawn from same and the changes/adaptions EIOPA will introduce having reviewed its operation to date and new external factors.

The Update reports that the strategy is being successfully implemented by EIOPA through the incremental development of tools as outlined in the strategy. Such tools include thematic reviews and the consumer trends report. EIOPA notes that the incremental approach is making good progress and will be continued.

EIOPA however also provides that the strategy will need to place an increased emphasis on (i) driving supervisory convergence in practical conduct of business supervision by launching conduct country visits and (ii) enhance market monitoring and conduct risk assessment due to external developments such as Brexit, the Insurance Distribution Directive and the Regulation on key information documents.

For further information on the EIOPA's 'next steps' please find a copy of the Update [here](#).

(v) EIOPA publishes the Supervisory Convergence Work Plan for 2018/2019

On 24 April 2018, EIOPA published the ‘Supervisory Convergence Work Plan for 2018/2019’ (“**Plan**”) for the insurance sector.

The Plan sets out the mechanisms EIOPA will be deploying to ensure a consistently high and effective level of supervision is exercised across the European Union in the insurance sector. Three areas of the Plan will be focused on and were selected based on their impact on policy holders and financial stability. These are as follows:

- ▣ Implementation of the common supervisory culture and further development of supervisory tools;
- ▣ Risks to the internal market and to the level playing field which may lead to supervisory arbitrage; and
- ▣ Supervision of emerging risks; such as Insurtech, Brexit and cyber-risk.

A progress report of this Plan is intended to be published at the beginning of 2019 by EIOPA.

For further information please find a copy of the Plan [here](#).

(vi) EIOPA publishes decision on submission of occupational pensions information

On 25 April 2018, EIOPA published a decision of the board of supervisors on EIOPA’s regular information requests towards national competent authorities regarding provision of occupational pensions information.

The decision sets out a single framework for regular information requests towards national competent authorities regarding the provision of occupational pension information to effectively monitor and assess the European occupational pensions sector, with a particular focus on effects to financial stability.

This will facilitate efficient reporting processes and enables EIOPA to receive sufficient information required for appropriate monitoring and thoroughly assessing market developments in the area of occupational pensions as well as to undertake in-depth economic analyses of the occupational pension market. EIOPA's request focuses on three main information areas:

- ▣ Balance sheet information;
- ▣ Inputs and assumptions used for valuations; and
- ▣ Flow data.

The reporting requirements will apply as of the third quarter of 2019 for quarterly reporting and as of 2019 for annual reporting taking into account a transitional period and a proportionate approach for smaller institutions for occupational retirement provision (“**IORPs**”).

The decision may be accessed [here](#).

(vii) EIOPA publishes its updated Risk Dashboard based on the fourth quarter 2017 data

On 27 April 2018, EIOPA published its risk dashboard for the fourth quarter of 2017. The risk dashboard gives an overview of risks faced by the insurance industry on a Pan-European basis.

The results show that the risk exposure of the insurance sector in the European Union remained stable. However, despite positive macroeconomic developments, low interest rates continue to represent a major source of risk for insurers. Credit risk and market risk are still at a medium level. Spreads further decreased and concerns about potential risk mispricing remained. Volatility of equity prices increased and valuations are now slightly lower.

The risk dashboard for the fourth quarter of 2017 is available [here](#).

(viii) EIOPA publishes position paper on implementation of IORP II Directive

On 2 May 2018, the Occupational Pensions Stakeholder Group (“**OPSG**”) of EIOPA published a position paper on the implementation of the new Directive on the activities and supervision of institutions for occupational retirement provision (“**IORP II**”).

The position paper offers feedback on the implementation of IORP II, which came into effect on 12 January 2017. The paper offers proposals aimed at clarifying a number of IORP II provisions and procedures, with a view to promoting legal certainty and avoiding unjustified roadblocks from national supervisory authorities. The proposals address the role of EIOPA, cross border transfers, the establishment of the Pension Benefit Statement and address a number of specific Member State issues.

The position paper is available [here](#).

In June 2018, the Proposal for a Directive of the European Parliament and of the Council on the activities and supervision of institutions for occupational retirement provision (recast) (“**IORP II Directive**”) was updated on 27 June 2018 with an information note 2018/C224/36 and an updated 'I' Item Note on 28 June 2018.

The information note 2018/C224/36 can be accessed [here](#), while the 'I' Item Note can be accessed [here](#).

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

On a monthly basis, EIOPA updates information on the symmetric adjustment of the equity capital charge. The symmetric adjustment to the equity capital charge shall be included in the calculation of the equity risk sub-module in accordance with the solvency capital requirement (“**SCR**”) standard formula to cover the risk arising from changes in the level of equity prices.

This adjustment is regulated mainly in Article 106 of the Solvency II Directive; Article 172 of the Solvency II Regulation (the “**Solvency II 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 Regulation as follows:

- ▣ With reference to the end of March 2018 on 6 April 2018.
- ▣ With reference to the end of April 2018 on 7 May 2018; and
- ▣ With reference to the end of May 2018 on 6 June 2018.

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

(x) EIOPA launches Fourth European Union-Wide Insurance Stress Test

On 14 May 2018, EIOPA launched the ‘Fourth European Union-Wide Insurance Stress Test.’ The results will enable EIOPA to assess the vulnerabilities of the European insurance sector, raise awareness of the threats in the insurance sector to financial stability and to increase transparency by the disclosure of results to ensure a level playing field.

For the purposes of the stress test exercise forty-two European insurance groups have been selected by EIOPA. The selected groups will be required to have submitted their results to their national competent authority by 16 August 2018.

On 9 April 2018, EIOPA published its adverse scenarios exercise for 2018 which has a reference date of 31 December 2017. The scenarios relating to the insurance sector specifically are as follows:

- ▣ Yield curve up shock combined with lapse and provisions deficiency stress;
- ▣ Low yield shock combined with longevity stress; and
- ▣ Natural catastrophe scenario.

The document setting out the adverse scenarios can be found [here](#) and an accompanying press release can be found [here](#).

Please find EIOPA's designated webpage [here](#) which contains amongst other things the following documents that are updated regularly:

- ▣ Questions and Answers (“**Q&As**”): three sets of Q&As have been published to date – 28 May, 4, 11 and 22 June 2018;
- ▣ Reporting Templates: Three reporting templates and one explanatory note have been published as of 11 and 22 June 2018;
- ▣ Stress Test Specifications: a technical specifications and technical information document have been published, the most recent versions are dated 11 and 22 June 2018; and
- ▣ Background Documents: three background documents have been published, dated 14 May 2018.

(xi) EIOPA publishes Opinion on the impact of Brexit on the solvency position of insurers and reinsurers

On 18 May 2018, EIOPA published their ‘Opinion on the solvency position of insurance and reinsurance undertakings in light of the withdrawal of the United Kingdom from the European Union’ (“**Opinion**”).

The Opinion is drafted on the assumption that the United Kingdom will become a third country on 29 March 2019 and aims to ensure that all the risks to the solvency position of the European Union’s insurance and reinsurance firms (“**Firms**”) arising from Brexit are address by the national supervisory authorities.

The Opinion looks at the potential consequences Firms may face in relation to the determination of technical provisions, own funds and capital requirements where the United Kingdom becomes a third country. It also considers the risks arising under the Solvency II Directive. The Opinion provides fourteen areas where the determination of the solvency positions of insurers will change as a result of Brexit including:

- ▣ European Union firms may not be able to service insurance contracts concluded in the United Kingdom after Brexit and vice versa;
- ▣ The loss of passport rights will affect the United Kingdom’s banks and investment firms’ ability to provide derivatives to transfer risks which in turn affect their ability to use derivatives to mitigate risks for solvency capital requirements;
- ▣ Credit rating agencies in the United Kingdom will be deregistered affecting external credit ratings issued by them since they will no longer qualify as external credit

assessment institutions. External credit ratings issued by them may therefore not be used for regulatory purposes; and

- ▣ The United Kingdom's government and Bank of England solvency capital requirements for exposures may increase since they will not benefit from the zero-risk charge for spread risk and market risk for the government bonds of Member States of the United Kingdom.

EIOPA also offers some measures that could be taken to mitigate these risks.

For more information please find a copy of the Opinion [here](#) and a copy of the Press Release [here](#).

(xii) First comparative study on market and credit risk modelling published by EIOPA

On 22 May 2018, EIOPA published its 'First Comparative Study on Market and Credit Risk Modelling' ("**Report**").

The Report summarises the key findings of a European-wide comparative study of market and credit risk in internal models on 2016/7 data ("**Study**") undertaken by a project group of several national competent authorities and EIOPA. It also sets out the supervisory initiatives being taken as a result of the findings of the study.

The primary objective of the Study was to begin the process of developing a European supervisory tool in the area of market and credit risk modelling to facilitate convergence of supervisory approaches given the potential for different mathematical, statistical and IT solutions to be used in risk profiles.

The Report found significant variations in asset model outputs, however provided that further scrutiny of facets of asset types would be required to identify the underlying causes. EIOPA provided that it will perform regular studies on the market and credit risk modelling in internal models starting from the year end of 2017.

For more information please find a copy of the Report [here](#).

(xiii) EIOPA calls for insurance undertakings to avoid products banned by ESMA

On 1 June 2018, EIOPA published a 'Statement on consumer detriment resulting from policyholder exposure to contracts for differences and binary options'.

The statement calls for insurance undertakings to avoid the instruments subject to ESMA's ban or restriction for retail investors due to the possible risks to policyholders.

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

(xiv) EIOPA publishes opinion on European Commission proposal regarding review of the ESAs

On 13 June 2018, EIOPA published an opinion regarding the European Commission's proposal in the context of the review of the European Supervisory Authorities ("**ESAs**"). The opinion focused on the following points:

- ▣ The role and mandate of the Stakeholder Groups;
- ▣ The powers and tools at the ESAs' disposal;
- ▣ The supervisory architecture of the ESAs;
- ▣ The funding and budget of the ESAs; and
- ▣ The cost/benefit and net performance analysis.

The opinion is available [here](#).

(xv) EIOPA publishes response to the European Commission's action plan on financing sustainable growth

On 13 June 2018, EIOPA published an opinion regarding the European Commission's action plan on financing sustainable growth.

The opinion welcomed initiatives by the European Commission to facilitate sustainable growth and noted that pension investments are well-placed to contribute to the transition towards sustainable finance given that they are long term oriented. The response addresses topics such as environmental, social and governance goals, the preferences of plan members, capital requirements, stress testing, and long termism.

The response is available [here](#).

(xvi) EIOPA publishes Annual Report 2017

On 15 June 2018, EIOPA published its annual report for 2017. The annual report provides an overview of EIOPA's activities in 2017, which focused on three main areas:

- ▣ **Consumer protection:** EIOPA contributed to the promotion of a smart regulatory framework by providing technical advice and guidelines to relevant parties, took a proactive role in identifying and tackling risk of consumer detriment, and produced its Consumer Trends Report which highlighted the significant increase in consumer complaints in the insurance sector;
- ▣ **Supervisory convergence and improving the functioning of the internal market:** EIOPA prioritised the evaluation and review of the Solvency II Regulation by issuing

advice, assisted national competent authorities apply Solvency II consistently, contributed to the strengthening of supervision of cross-border groups, and published three supervisory opinions; and

- ▣ **Financial stability:** In 2017, EIOPA conducted an occupational pensions stress test which provided a robust assessment of the resilience of institutions for occupational retirement provisions.

The annual report is available [here](#), and an accompanying press release is available [here](#).

(xvii) EIOPA publishes speech on mis-selling of financial products

On 19 June 2018, a speech by Timothy Shakesby on mis-selling of financial products was delivered to the European Parliament and published by EIOPA. The speech focuses on four primary points:

- ▣ It is important that EIOPA continues to improve its efforts to tackle mis-selling however notes that it is a difficult task without any regulatory “magic bullets”;
- ▣ The recent regulation in this area by the European Union will make a big difference and notes that the sections addressing firm culture could be of the most significance;
- ▣ The most useful mechanism to bring about change in this area is a greater focus on supervision and implementation; and
- ▣ The importance of financial innovation.

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

(xviii) EIOPA Annual Financial Stability Report published

On 25 June 2018, EIOPA published its annual Financial Stability Report 2018 on the subject of (re)insurance and occupational pensions sectors in the European Economic Area. The Report is structured as follows:

- ▣ **Chapter 1:** Sets out the primary risks for the insurance and occupational sector which are low yields and signs of volatility, climate risk and sustainable insurance and technological developments and the insurance sector;
- ▣ **Chapter 2-4:** Elaborates on the risks identified in Chapter 1 with each chapter addressing such risks in relation to one of the three sectors i.e. insurance, reinsurance and pension;
- ▣ **Chapter 5:** Sets out the final qualitative and quantitative assessment of the risks discussed by analysing the likelihood and the gravity of the actualisation of the event; and

- ▣ Concludes with a thematic article on what the potential drivers of insurers' equity investments is likely to be.

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

(xix) EIOPA launches survey on InsurTech

On 27 June 2018, EIOPA launched a survey on InsurTech collecting the views of stakeholders, which it defines as “*technology-enabled innovation in insurance that could result in new business models, applications, processes or products with an associated material effect on the provision of insurance products and services*”.

The survey focuses on licensing requirements, barriers to InsurTech and InsurTech facilitation which will aid EIOPA in mapping supervisory approaches in identifying and reporting on best practices and regulatory barriers to financial innovation.

The survey is open to participants until 12 August 2018 and can be accessed [here](#), with the accompanying press release available [here](#).

(xx) EIOPA publishes opinion on the disclosure of information to customers about the impact of the United Kingdom's withdrawal from the European Union

On 28 June 2018, EIOPA published an opinion and frequently asked questions (“**FAQS**”) on the disclosure of information to customers about the impact of the withdrawal of the United Kingdom from the European Union.

The opinion sets out EIOPA's expectations for insurers to communicate to customers on the implications of Brexit such as cross-border insurance contracts that have been concluded before the withdrawal date are in principle valid after that date and ensure the continuity of their services in order to fulfil their contracts with customers and to inform customers "in due time" of the implications for existing and new contracts concluded before the withdrawal date. EIOPA defines for these purposes, a "customer" as a beneficiary (that is, any person who is entitled to a right under an insurance contract). Insurance undertakings should inform new beneficiaries when they submit claims.

Insurers should provide customers with clear and non-misleading information on how the relevant contingency measures taken or planned by them will affect their contractual relationship and services, such as:

- ▣ The change of the contractual counterparty following the transfer of insurance contracts to another firm;
- ▣ Any changes or loss of protection provided by existing national compensation schemes;
- ▣ Changes to the claims management procedure or to other customer services; and

- ▣ Changes in the applicable law to the insurance contract.

Potential customers should be provided with information to make an informed decision before concluding or renewing an insurance contract. Insurance intermediaries will also be subject to this information obligation when they carry out insurance distribution activities at the point of sale, although the responsibility will rest with the insurers.

If and where applicable, insurers should inform customers if they have taken no contingency measures and their reasons for taking this approach and provide this to their distribution channels accordingly.

The accompanying press release can be found [here](#).

The opinion can be accessed [here](#) with the FAQ being accessible [here](#).

Insurance Distribution Directive (“IDD”)

(i) **Delegated Regulation delaying the application of Delegated Regulations supplementing the IDD published in Official Journal of the European Union**

On 6 April 2018, the Commission Delegated Regulation ((European Union) 2018/541) to amend and delay the application of two Delegated Regulations supplementing the Insurance Distribution Directive (“IDD”) was published in the Official Journal of the European Union.

The application date of the following Delegated Regulations has been moved from 23 February 2018 to 1 October 2018:

- ▣ Commission Delegated Regulation (European Union) 2017/ 2358 of 21 September 2017 supplementing the IDD with regard to product oversight and governance requirements for insurance undertakings and insurance distributors; and
- ▣ Commission Delegated Regulation (European Union) 2017/ 2359 of 21 September 2017 supplementing the IDD with regard to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products (“IBIPs”).

As a result, the application date of each of the amended Delegated Regulations now align with the application date of the IDD itself.

The Delegated Regulation amending the application date is available [here](#).

(ii) **European Commission publishes draft delegated regulation with regard to ESG preferences in the distribution of insurance-based investment products**

On 24 May 2018, the European Commission published a draft delegated regulation amending Delegated Regulation (European Union) 2017/2359 with regard to

environmental, social and governance (“**ESG**”) preferences in the distribution of insurance-based investment products.

The proposal aims to amend the delegated act under the IDD to ensure that sustainability considerations are taken into account in the advisory process, both in the customer profiling and subsequent product selection.

Feedback on the proposal was to be submitted to the European Commission by 21 June 2018.

The draft delegated regulation is available [here](#).

(iii) ECJ interprets ‘insurance mediation’ under IMD to include preparatory work of an insurance contract

On 31 May 2018, the Court of Justice of the European Union (“**ECJ**”) handed down their judgement on the interpretation of the Insurance Mediation Directive 2009/92 (“**IMD**”) in response to a request from the Supreme Court of Sweden in relation to two ongoing cases. Agreeing with the Advocate General’s Opinion delivered on 21 November 2017, the ECJ held that:

- ▣ The definition of "insurance mediation" in Article 2(3) of the IMD includes work preparatory to the conclusion of an insurance contract, even where the insurance intermediary has no intention to conclude a genuine insurance contract; and
- ▣ Financial advice regarding capital placement where there is insurance mediation in connection to the conclusion of a capital life assurance contract falls within the scope of IMD and not the Markets in Financial Instruments Directive (“**MiFID**”) since MiFID’s Article 2(c) excludes such advice given in this context. The placement of capital forms part of the "insurance contract" and therefore any investment advice relating to that placement is work preparatory to the insurance contract.

A copy of the ECJ’s judgement is available [here](#).

(iv) EIOPA publishes draft regulatory technical standards adapting base euro amounts for professional indemnity insurance and financial capacity of intermediaries under the IDD

On 27 June 2018, EIOPA published and submitted to the European Commission for endorsement, the draft regulatory technical standards (“**RTS**”) which adapt the base euro amounts for professional indemnity insurance (“**PII**”) and for financial capacity of intermediaries under Article 10(7) of the IDD.

The draft RTS is the result from EIOPA’s final report public published on 15 June 2018, which summaries responses from the consultation conducted in February 2018 where four responses expressed support for the proposed draft RTS. The final report sets out

background information on PII and the review undertaken by EIOPA and the legal requirement of insurance intermediaries to hold PII under Article 10(4) of the IDD including a description of the calculation method applied by EIOPA to adapt the base amount referred to in Article 10(4) of the IDD and the draft RTS.

Based on the changes in the European index of consumer prices (“**EICP**”) which increased by 4.03% in the relevant period from 1 January 2013 to 31 December 2017 the base amount for professional indemnity insurance and financial capacity of intermediaries are:

- ▣ The amount of € 1,250,000 per claim is increased to € 1,300,380 per claim;
- ▣ The amount of € 1,850,000 for all claims/year is increased to € 1,924,560 for all claims/year; and
- ▣ The amount of € 18,750 of financial capacity is increased to € 19,510.

A copy of the letter submitting the draft RTS from EIOPA to the European Commission can be accessed [here](#) with the draft RTS [here](#) and the accompanying press release being accessible [here](#).

A copy of the final report on the draft RTS can be accessed [here](#).

(v) The Insurance Distribution Directive was transposed into Irish national law

On 27 June 2018, the Minister for Finance and Public Expenditure & Reform, Mr. Paschal Donohoe T.D. signed the European Union (Insurance Distribution) Regulations 2018 (the “**Regulation**”) into national law which fulfils Ireland’s requirement to transpose the IDD by the transposition deadline of 1 July 2018.

The Minister said that: “*The Insurance Distribution Directive regulates the way insurance products are sold in the European Union. This transposition of IDD into national law updates existing law and will enhance the protection for consumers and retail investors buying insurance products in Ireland*”.

The IDD aims to enhance consumer protection, ensure a level playing field by extending the scope of the directive to include all sales of insurance products and by seeking to identify and mitigate conflicts of interest in the area of commissions and administrative sanctions.

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

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

Pan-European Personal Pension Product (“PEPP”)

(i) Council of the European Union agrees negotiating stance on PEPP

On 19 June 2018, the Council of the European Union agreed its negotiating stance on the European Commission proposal for a Regulation on Pan-European Pension Product (“PEPP”).

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. The proposal aims to benefit consumers by boosting choice and competition. It also seeks to bolster the plan for a capital markets union, as it will help channel savings towards long-term investments.

Negotiations with the European Parliament can proceed as soon as the Parliament has agreed its stance.

The Council of Europe negotiating mandate with regard to the proposed Regulation is available [here](#).

(ii) The European Parliament's Internal Market and Consumer Protection Committee published an opinion on the PEPP Regulation

On 26 June 2018, the European Parliament's Internal Market and Consumer Protection Committee (“IMCO”) published an opinion on the proposed PEPP Regulation, which proposed various amendments and clarifications in order to guarantee a high level of consumer protection, such as:

▣ Information obligations

It is suggested that the provisions on advertising and the pre-contractual information (“PEPP-KID”) to be dealt within the PEPP Regulation and for the reference to the PRIIPs Regulation to be removed which will provide for more clarity and certainty.

▣ Portability

The aim for having the PEPPs available in all the European Union Member States is ambitious but suggests that the deadline for setting up the compartments needs to be extended to five years as the timeframe is too tight.

▣ Investment options

The PEPP should be a simple, safe, transparent, consumer-friendly and reasonably-priced pension product. In order to achieve this, it is suggested that a decision tree is provided by EIOPA to help consumers make a well informed decision.

IMCO calls on the Committee on Economic and Monetary Affairs (“**ECON**”) to take its amendments into account and for the draft report to be voted on before it is considered by the European Parliament in plenary. A copy of the opinion can be accessed [here](#).

Insurance Europe

(i) **Insurance Europe publishes position paper on review of SME definition**

On 26 April 2018, Insurance Europe published a position paper in response to a European Commission consultation on the review of the definition of small and medium-sized enterprises (“**SMEs**”).

The paper recognises the benefit of having a common European Union-wide definition of an SME. However, Insurance Europe is of the view that the criteria and thresholds put forward by the Commission are not appropriate for insurance undertakings, more specifically the turnover and balance sheet criteria. The paper notes that according to these criteria, very few insurance undertakings qualify as an SME. The paper goes on to set out a number of proposed changes to the definition of an insurance undertaking.

The position paper is available [here](#).

(ii) **Insurance Europe publishes response to EIOPA consultation on Solvency II reporting and disclosure ITS**

On 14 May 2018, Insurance Europe published a response to EIOPA consultation as regards corrections and amendments of the implementing technical standards (“**ITS**”) on reporting and disclosure for Solvency II.

Insurance Europe noted that given that the final taxonomy will only be published in mid-July, it would not be feasible, especially for complex groups, to implement the new validations in time for Quarter 4 reporting. Insurance Europe went on to propose that the new validations should not be obligatory in the first year of application.

Insurance Europe also recommended that EIOPA include all relevant Q&As in the ITS. The response is available [here](#) and the EIOPA consultation is available [here](#).

(iii) **Insurance Europe publishes response to European Commission proposal to amend Solvency II capital requirements for STS securitisations**

On 18 May 2018, Insurance Europe published its response to a European Commission proposal on revised calibrations for securitisation investments by insurance and reinsurance undertakings under Solvency II (the “**proposed Regulation**”).

Insurance Europe welcomed the proposed Regulation, and stated its support of the encouragement of sound securitisations to help achieve the objectives of the Capital Markets Union project. However, Insurance Europe noted that the proposed Solvency II

capital requirements remain significantly high compared to the actual/historical credit risk of this asset class, and that the proposed calibrations are still too conservative.

The Insurance Europe response is available [here](#). The text of the proposed Regulation is available [here](#).

(iv) Insurance Europe publishes Annual Report for 2017 – 2018

On 23 May 2018, Insurance Europe published its Annual Report for 2017 – 2018. The report sets out Insurance Europe’s views on new challenges and developments in the insurance industry over the past year. The report contains 21 articles on insurance issues including:

- ▣ Why the Solvency II reviews are so important to European growth;
- ▣ How the European Commission’s proposed pan-European personal pension products can be made attractive to customers and providers; and
- ▣ Why motor and cyber risk insurers need access to newly available data sources.

The report is available [here](#).

(v) Insurance Europe President urges policymakers to close global protection gaps

On 24 May 2018, the president of Insurance Europe, Andreas Brandstetter, made a speech at Insurance Europe’s Tenth International Insurance Conference in Madrid.

Mr. Brandstetter, in his opening remarks, warned of the huge challenges posed to the insurance industry by changing demographics. He noted that policymakers need to be transparent regarding the state of public finances, and incentivise individuals to save more for retirement.

Mr. Brandstetter went on to address the scale of underinsurance of natural catastrophe risk, noting that policymakers must take bold action to limit climate change.

Finally, Mr. Brandstetter warned that insurers’ ability to offer insurance cover for cyber risks is hampered by a lack of data, and urged policymakers to make such information available so insurers may refine the protection they offer to clients.

An accompanying press release is available [here](#).

(vi) Insurance Europe caution on the European Commission’s collective redress proposal

On 25 June 2018, Insurance Europe issued a press release along with its ‘Key Messages’ position papers which cautions against the adoption of the collective redress proposal made by the European Commission as part of its “New Deal for Consumers”.

The proposal fails to follow the European Commission's own 2013 recommendations on collective redress which would create an imbalance between consumers and defendant companies with consumer's rights to choose whether to be affected by civil procedures are not protected and the scope of the proposal is unclear.

A copy of Insurance Europe's '*Key messages on representative actions*' can be found [here](#) and the '*Key concerns about the detail of the European Commission's proposal on representative actions*' can be found [here](#) with the accompanying press release being accessible [here](#).

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

Insurance Ireland

(i) Insurance Ireland publishes annual report for 2017

On 5 April 2018, Insurance Ireland published its annual report for 2017 which summarises the work conducted by the organisation during 2017.

Amongst other things, the report addresses work done by Insurance Ireland both home and abroad on behalf of its members, opportunities for insurance technology, and updates from a number of Insurance Ireland working groups.

In his review, Frank Mee, President of Insurance Ireland, notes that although the industry still lacks certainty as to how Brexit may affect insurance, Insurance Ireland aims to continue its model of constant engagement with stakeholders to ensure their members' views are heard. He noted that the industry will face challenges in 2018, especially with regard to the Solvency II review and the introduction of GDPR.

In his review, Kevin Thompson, CEO of Insurance Ireland, again addressed the uncertainty brought by Brexit, noting that Insurance Ireland's participation in the Insurance Europe Brexit Project Group was a key element of their work to inform the industry's response to issue such as servicing contracts, data sharing and regulatory compliance. Mr. Thompson noted that Insurance Ireland will continue its work seeking reforms to the issue of the cost of claims in 2018, following the publication of the new draft legislation for the Personal Injuries Assessment Board ("PIAB") in 2017.

The annual report is available [here](#).

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

(i) **Speech based on PRIIPs Regulation delivered at ESAs’ Consumer Protection Day by ESMA Chair**

On 22 June 2018, Steven Maijoor, the chairperson of ESMA delivered a speech on the topic of consumer protection at the European Supervisory Authorities (“ESAs”) Consumer Protection Day (“Speech”).

The Speech deals with among other things the implementation of the Packaged Retail and Insurance-based Investment Products Regulation (“PRIIPs Regulation”) and in particular the key information documents. He reports that remedying and identifying implementation issues is an ongoing work in progress by ESAs and lists the scope of the PRIIPs Regulation, performance scenarios and transaction costs as areas the ESAs are currently reviewing.

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

(ii) **Date of Application of European Parliament’s decision to adopt regulation on key information documents**

On 27 June 2018, an information note announcing the date of application of the first reading by the European Parliament of the proposal for a ‘regulation amending regulation 1286/2014 on key information documents for packaged retail and insurance-based investment products as regards the date of its application’ was published in the Official Journal.

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

(iii) **EFAMA publishes paper on PRIIP KID’s shortcomings**

On 28 June 2018, the European Fund and Asset Management Association (“EFAMA”) published an Evidence Paper which explains the shortcomings of the new Packaged Retail Investment and Insurance Products (“PRIIPs”) Key Information Document (“KID”) rules based on data collected from its corporate members.

The paper concludes that the disclosures made in the KIDs are causing serious detriment to investors by mandating figures, particularly in relation to performance and costs that are confusing and misleading.

In a press release accompanying the Evidence Paper, EFAMA called for the European Supervisory Authorities and the European Commission to immediately revise the PRIIPs Delegated Regulation.

The Evidence Paper is available [here](#).

European Markets Infrastructure Regulation (“EMIR”)

(i) **Technical guidance on reporting critical data elements of OTC derivatives published by CPMI and IOSCO**

On 9 April 2018, the Committee on Payments and Market Infrastructures (“CPMI”) and the International Organization of Securities Commissions (“IOSCO”) published a report providing technical guidance to authorities on reporting critical data elements of over-the-counter (“OTC”) derivatives transactions to trade repositories.

The technical guidance relates to harmonised definitions, formats and usage of a set of critical data elements for OTC derivatives transactions excluding unique transaction identifiers and unique product identifiers to be used when reporting the transactions to trade repositories. The IOSCO and CPMI intend that by providing guidelines on these harmonised critical data elements, the G20 goal of having all OTC derivatives contracts harmoniously reported to trade repositories to prevent market abuse is greatly assisted.

For further information a copy of the report can be found [here](#).

(ii) **ESMA questions the ability of CCP’s to exempt entities from EMIR financial obligations**

On 27 April 2018, ESMA published a letter addressed to the European Commission which expressed concerns regarding the application of exemptions applied by CCPs in different Member States to certain clearing members such as government entities or central banks from the financial obligations under Article 41 and 42 of EMIR to provide the CCP with an initial margin and a default contribution.

ESMA noted different practices being adopted across European Union CCPs. It also noted differing interpretations of “credit exposures” by national competent authorities rendering a lack of supervisory convergence across the European Union and an uneven playing field.

The letter requested the Commission to clarify whether CCPs are allowed to refrain from collecting margin and default fund contributions from public entities and if so asks whether an amendment to EMIR would be appropriate.

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

(iii) **ESMA publishes official translations of ESMA Guidelines on transfer of data between trade repositories**

On 27 April 2018, ESMA published translations of the ESMA Guidelines on transfer of data between Trade Repositories (“Guidelines”) in each of the official languages of the European Union.

National competent authorities to which these Guidelines apply must now notify ESMA whether they comply or intend to comply with the Guidelines within two months.

The translated Guidelines can be found [here](#).

(iv) LEI Regulatory Oversight Committee publish their second progress report on the global LEI system and regulatory uses of LEI

On 2 May 2018 a second progress report on the global Legal Entity Identifier (“LEI”) system and regulatory uses of the LEI was published by the LEI Regulatory Oversight Committee (“**Progress Report**”).

The Progress Report, dated 30 April 2018, relays its observations using the following headings:

- ▣ **Completion of the Global Legal Entity Identifier System (“GLEIS”) governance framework:** All active LEI issuers have now been accredited by GLEI Foundation;
- ▣ **GLEIS is providing richer information:** by the inclusion of information based on the “relationship among entities” and therefore their ultimate parent companies which will assist risk aggregation;
- ▣ **Current regulatory uses:** At least 91 regulatory uses have been made of the LEI by authorities in jurisdictions represented on the Regulatory Oversight Committee (“**ROC**”);
- ▣ **Provides examples of other potential regulatory uses:** to raise awareness of other potential uses for the LEI such as facilitating the monitoring of transactions by legal entities to prevent money laundering and the financing of terrorism;
- ▣ **Policy standards under development by the LEI ROC;** and
- ▣ **Possibilities for supporting the expansion of the system:** noting that there has been a rapid increase of LEI’s registered at the end of 2017 with the figure now exceeding one million.

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

(v) CPMI and IOSCO publish Report assessing CCP’s compliance with PFMI standards

On 3 May 2018 a report on the ‘implementation and monitoring of the principles for financial market infrastructures’ (“**PFMI**”)(“**Report**”) was published by the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions.

The Report documents the results of a follow up level three assessment of 10 derivative CCPs originally assessed in 2016 and expands the sample to 19 globally active and

regionally focused CCPs providing services to a broader range of product classes, such as repo, bonds and equities, in addition to derivatives. The Report focuses on:

- ▣ Recovery planning;
- ▣ Coverage of financial resources; and
- ▣ Liquidity stress testing.

The Report notes that progress had been made by participating CCPs who have implemented arrangements consistent with the PFMI however noted that some failed to implement measures in the areas of risk management and recovery planning which is cause for serious concern.

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

(vi) ESAs publish two Consultation papers to amend RTS on EMIR clearing obligation and risk mitigation techniques

On 4 May 2018, the European Supervisory Authority launched two consultations to amend the Regulatory Technical Standards (“**RTS**”) which implement the European Market Infrastructure Regulation (“**EMIR**”), to amend the clearing obligations and risk mitigation techniques for over-the-counter derivatives not cleared.

The first consultation paper (“**JC 14**”) deals with the clearing obligations:

- ▣ JC 14 aims at clarifying which arrangements under covered bonds or securitisations adequately mitigate counterparty risk and thus may benefit from an exemption from the clearing obligation.

While the second consultation paper (“**JC 15**”) deals with the risk mitigation techniques:

- ▣ JC 15 aims at providing the special treatment currently associated with covered bonds to simple, transparent and standard (“**STS**”) securitisations however the special treatment will only be extended where a STS securitisation structure meets a specific set of conditions equivalent to those required by covered bonds issuers.

These amendments which were mandated for by the Securitisation Regulation aim to enable specific treatment for STS securitisation to ensure a level playing field with covered bonds. The deadline for responses for both consultations was 15 June 2018.

The draft RTS will now be submitted to the European Commission for endorsement by 18 July 2018 after which they will be considered by the European Parliament and the Council of the European Union.

JC 14 can be accessed [here](#) and JC 15 can be accessed [here](#).

(vii) ESMA publishes final guidelines on anti-procyclicality margin measures for CCPs under EMIR

On 28 May 2018, ESMA published its final report on the 'guidelines on anti-procyclicality ("APC") margin measures for central counterparties under EMIR' ("**Final Report**"). The guidelines were prepared to foster consistent, efficient and effective supervisory practices and to ensure that the application of EMIR is common, uniform and consistent to prevent procyclicality of CCP margins. The Final Report provides information on:

- ▣ The monitoring of margin procyclicality;
- ▣ Implementation of APC margin measures;
- ▣ Disclosures intended to facilitate margin predictability;
- ▣ Details the feedback ESMA received to its January 2018 consultation on the guidelines; and
- ▣ Indicates how the responses have been taken into account.

From 3 December 2018 the guidelines will apply and will replace amongst other things ESMA's existing CCP Q&A 9(c) which will simultaneously be deleted.

The Final Report also reports that national competent authorities will be required to notify ESMA within two months of the date of publication of the guidelines indicating whether they comply or intend to comply with the guidelines.

For further information please find a copy of the final report [here](#).

(viii) Council of the European Union adopts Decision to add the EMIR Delegated and Implementing Regulations into EEA Agreement

On 4 June 2018, the Council of the European Union published a Decision on the position to be adopted, on behalf of the European Union, within the European Economic Area ("**EEA**") Joint Committee concerning the amendment of Annex IX (Financial Services) to the EEA Agreement' ("**Decision**") in the Official Journal of the European Union.

The Decision, dated 22 May 2018, has the objective of amending Annex IX (Financial Services) to the EEA Agreement by inserting seventeen delegated regulations and five implementing regulations of the European Market Infrastructure Regulation into the EEA Agreement.

For further information please find a copy of the Decision [here](#).

(ix) European Parliament adopts the EMIR Refit Regulation

On 12 June 2018, the European Parliament published a press release reporting that it had voted to accept the negotiating mandate prepared by the European Parliament's Committee on Economic and Monetary Affairs ("**ECON**") on the proposed Regulation amending the European Market Infrastructure Regulation (the "**EMIR Refit Regulation**").

The EMIR Refit Regulation has the objective of simplifying and ensuring that the clearing rules for small and non-financial counterparties are proportionate and will provide pension scheme arrangements with an interim exemption from the mandatory clearing of derivatives.

The Commission, Council and Parliament will now engage in a three way discussion to reach political agreement on the EMIR Refit Regulation. The Bulgarian Presidency aims to have the legislative text finalised by the end of 2018.

For further information please find a copy of the Parliament's draft text [here](#).

(x) ESMA publishes annual report on supervisory measures and penalties imposed by NCAs under EMIR

On 13 June 2018, ESMA published its first annual report as regards supervisory measures carried out and penalties imposed by national competent authorities ("**NCAs**") under Articles 4, 9, 10 and 11 of EMIR. The report is based on a survey, distributed to the NCAs by ESMA, which sought information as regards their supervisory activities in their enforcement of counterparties compliance with the EMIR requirements.

The report concluded, amongst other things, that:

- ▣ While some areas appear highly harmonised such as the sources of information used by NCAs to verify compliance with EMIR provisions, other areas are less harmonised with fines ranging from €120 up to a maximum of €100 million; and
- ▣ NCAs appear not to have prioritised supervisory actions as regards third country entities trading contracts with substantial effect in the EU, which would be subject to the clearing obligation if established in the EU, and ESMA notes that this point could be further considered.

The report is available [here](#).

(xi) ESMA publishes updated Q&As on EMIR implementation

During the period 1 April 2018 to 30 June 2018, ESMA published an updated version of its Question & Answers ("**Q&A**") on the implementation of European Market Infrastructure Regulation. The revisions to the Q&As comprise:

- ▣ Trade Repositories (“TR”) Q&A 12: A new Q&A has been inserted regarding the correct date to report where a Maturity date falls on a weekend or a bank holiday;
- ▣ TR Q&A 17: A new Q&A has been inserted regarding the possibility of reporting post-trade events at position level in addition to the trade level;
- ▣ TR Q&A 28: A new Q&A has been inserted regarding how Table 2 Field 8 is to be populated for a derivative contract where the underlying is a basket or an index;
- ▣ TR Q&A 37: A new Q&A has been inserted regarding which competent authorities should have access to the transaction data on derivatives where the underlying identification type is reported with an “X” or a “B”;
- ▣ TR Q&A 46: A new Q&A has been inserted regarding the reporting of energy derivatives, more specifically for a swap on natural gas or electricity, as to how the specific information related to the characteristics of this derivative should be reported;
- ▣ TR Q&A 47: A new Q&A has been inserted regarding the reporting of deliverable currencies, more specifically how the fields Deliverable currency and Delivery currency 2 should be populated (Table 2 fields 11 and 61); and
- ▣ TR Q&A 48: A new Q&A has been inserted regarding how the Effective date (Table 2 Field 26) should be reported if it is not specified as part of the terms of the contract;

A copy of the Q&A on the implementation of EMIR can be accessed [here](#).

(xii) European Parliament publishes decision not to object to commission delegated regulation supplementing regulation 648/2012

On 19 June 2018, the European Parliament’s ‘Non-objection to a delegated act: regulatory technical standards for risk-mitigation techniques for certain OTC derivative contracts’ was published in the Official Journal (“**Decision**”).

The Decision provides that the European Parliament have decided to waive their right to object to the Commission delegated regulation supplementing Regulation 648/2012 on OTC derivatives, central counterparties and trade repositories with regard to risk mitigation techniques for OTC derivative contracts not cleared by a central counter party.

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

(xiii) Council of EU publishes revised proposal for compromise text on proposed Regulation to amend ESMA and EMIR Regulations as regards the authorisation and recognition of third-country CCPs

On 27 June 2018, the Council of the European Union published another revised presidency compromise proposal for a consolidated compromise text on the proposed Regulation

amending the European Securities and Markets Authority (“**ESMA**”) Regulation and European Market Infrastructure Regulation (“**EMIR**”) as regards the procedures and authorities involved for the authorisation of CPPs and requirements for the recognition of third-country CCPs (“**Compromise**”).

A copy of the Council of the European Union’s Compromise is available [here](#).

(xiv) ECON AFCO joint final report on draft decision to increase ECB’s regulatory powers of clearing systems published

On 27 June 2018, the joint final report authored by the European Parliament’s Economic and Monetary Affairs Committee (“**ECON**”) and the Committee on Constitutional Affairs (“**AFCO**”) (“**Report**”) on the subject of the draft decision amending Article 22 of the Statute of the European System of Central Banks of the European Central Bank (“**ECB**”) (“**Statute**”) was published.

The Decision involves amending the Statute to provide the ECB with more responsibility in regulating clearing systems for financial instruments by enabling the Eurosystem to monitor and assess risks posed by central counterparties clearing significant amounts of euro-denominated transactions and the ECB to adopt requirements for those CCPs.

The Report contains changes to the previous draft report published in April 2018 by ECON and AFCO however the explanatory statement has not been amended.

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

Securitisation Regulation

(i) Consultation on guidelines interpreting STS securitisation criteria launched

On 20 April 2018 the European Banking Authority (“**EBA**”) commenced a consultation on its draft guidelines (the “**Guidelines**”) to clarify and harmonize the interpretation of the requirements for non-asset-backed commercial paper (“**ABCP**”) and ABCP securitisations to qualify as simple, transparent and standardized (“**STS**”).

The European Central Bank was mandated to develop these guidelines by 18 October 2018 under the Securitisation Regulation. The Guidelines provide advices on the:

- ▣ Legal opinion required for the transfer of the underlying exposures;
- ▣ Originator and servicers’ required expertise;
- ▣ Underwriting standards;
- ▣ Exposures in default and credit impaired debtors; and

- ▣ Dependence on the sale of assets.

The public consultation will close on 20 July 2018.

A copy of the consultation paper on Draft Guidelines on the STS criteria for ABCP securitization can be found [here](#) with the consultation paper on Draft Guidelines on the STS criteria for non-ABCP securitization can be found [here](#).

(ii) ESMA Letter to the European Commission detailing feedback from its consultation on the regulatory and implementing technical standards under the Securitisation Regulation

On 24 April 2018, ESMA issued a letter to the European Commission setting out the feedback it had received from its consultation on the regulatory and implementing technical standards on securitisation disclosures prepared by ESMA, as mandated by the European Commission under the Securitisation Regulation.

Apart from concerns raised about the disclosure related transitional provisions in Article 43(8) of the Securitisation Regulation and the templates to be applied, the letter notes that the consultation was mostly positive and informs the European Commission of ESMA's intention to deliver its final report on the technical standards on securitisation disclosures in July 2018.

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

Central Clearing Counterparties (“CCPs”)

(i) Guidance provided by CPMI and IOSCO for supervisory stress testing of CCPs

On 10 April 2018, a guidance on the supervisory stress testing of CCPs was published by the Committee on Payments and Market Infrastructures (“CPMI”) and the International Organisation of Securities Commissions (“IOSCO”).

The framework will provide authorities with guidance on the design and implementation of supervisory stress tests for CCPs. In particular the guidance is designed to assist tests conducted by multiple authorities examining the potential macro-level impact of a common stress event affecting multiple CCPs.

Such tests will provide information on the interdependencies between markets, CCPs and other entities. The guidance was influenced by the consultation conducted for this guidance in June 2017.

For a copy of the guidance please click [here](#).

(ii) Ninth draft Implementing Regulation extending transitional periods related to own fund requirements for CCP exposures published by the Commission

On 17 April 2018, the European Commission published a draft Implementing Regulation which concerns the extension of the transitional periods related to own funds requirements for exposures to central counterparties (“**CCPs**”).

The draft Implementing Regulation extends the transitional periods by an additional six months until 15 December 2018. This is to avoid disruptions to the market and to prevent institutions being subjected to higher own funds requirements during the process of authorisation and recognition of existing CCPs.

The draft Implementing Regulation states that it should enter into force before 16 June 2018, following its publication in the Official Journal.

A copy of the draft Implementing Regulation can be found [here](#).

(iii) New list of CCPs from third countries recognised to offer services and activities in the European Union published

On 18 May 2018, ESMA published a list of third-country CCPs recognised to offer services and activities in the European Union in accordance with Article 88(1) of EMIR.

The list of CCPs can be found [here](#).

(iv) List of CCPs that have applied for recognition under Article 25 of EMIR published

On 19 June 2018, a list, provided for information purposes only, of the CPPs established in countries outside of the European Economic Area and that have applied under Article 25 of EMIR was published. The list will be updated and is emphasised as not necessarily being exhaustive.

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

(v) Opinion on how CPPs should assess liquidity

On 22 June 2018, ESMA published an ‘Opinion on Central Counterparties (“**CPP**”) Liquidity Risk Assessment under Article 44(1) of Commission Regulation 648/2012’ (“**Opinion**”) which was addressed to national competent authorities.

The Opinion sets out how CPPs should assess liquidity risk thereby encouraging convergent risk management and control practices across the European Union.

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

European Parliament

(i) Council of European Union publishes decision adopting the bilateral agreement between the European Union and the US on prudential measures regarding insurance and reinsurance

On 6 April 2018, the Council of European Union published its decision adopting the decision of the European Parliament approving the bilateral agreement on insurance and reinsurance measures. The decision was published in the Official Journal of the European Union.

Pursuant to Article 8 of the agreement, each party is to give notification that it has completed their respective internal requirements and procedures. Following exchange of notifications between the European Union and the United States, the agreement enters into force. On 9 April 2018, a Notice was published in the Official Journal of the European Union confirming the entry into force of the bilateral agreement. The Notice states that each party has given notification that it has completed their respective internal requirements and procedures necessary for the agreement to enter into force.

The decision is available [here](#) and the Notice is available [here](#).

(ii) JURI publishes draft report on the law applicable to third-party effects of assignments of claims

On 3 May 2018, the European Parliament's Committee on Legal Affairs ("JURI") published a draft report on the proposal for a Regulation on the law applicable to the third party effects of assignments of claims.

The draft report proposes amendments to the Commission proposal, dated 12 March 2018.

The draft report is available [here](#).

(iii) European Parliament's Report and Resolution on Sustainable Finance

On 16 May 2018, the European Parliament's Economic and Monetary Affairs Committee ("ECON") published its 'Report on sustainable finance'. The Report contains a motion for a European Parliament Resolution on sustainable finance (the "**Resolution**").

It begins setting out the reasons why such a resolution is necessary naming the G20 commitment to sustainable growth, the Sustainable Development goals of the United Nations and the other commitments made in many other formal settings such as speeches, reports, recommendations and agreements as reasons. The Report continues by setting out specific points that should be included in any such Resolution. These include:

- ▣ Calling on the European Commission to come forward with a legislative framework, recognising the proposals put forward in its March 2018 action plan on sustainable finance;
- ▣ Suggesting the European Commission introduces legislation establishing a “green finance mark” to be granted to investment, equity and pension products which achieved the highest sustainability standards;
- ▣ Calling on the European Commission to use its powers under the PRIIPs Regulation to adopt a delegated act specifying the details of procedures for establishing whether a PRIIP targets specific environmental or social objectives;
- ▣ The European Supervisory Authorities should develop guidelines for model contracts between asset owners and asset managers, including the identification and integration of environmental, social and governance risks on behalf of the asset manager; and
- ▣ ESMA should be mandated to require credit rating agencies to incorporate sustainability risks into their methodologies.

The Report on sustainable finance is available [here](#).

On 29 May 2018, the provisional edition of the text of the Resolution was published and adopted by the European Parliament. It has been delivered to the European Commission and European Council for consideration. The Resolution addresses a broad range of issues across a wide range of areas.

The sections that are of particular pertinence to the financial sector include:

- ▣ The role of the financial services sector as regards sustainability and the policies required for correcting market failures;
- ▣ The integration of sustainable finance criteria in all legislation related to the financial services sector;
- ▣ Sustainability risks within the prudential framework of capital adequacy rules;
- ▣ Labelling systems for financial services; and
- ▣ Clarification of the European Supervisory Authorities' mandate.

The Commission has been tasked with publishing regular progress report on the topics identified in the Resolution, a copy of the Resolution is available [here](#).

European Supervisory Authorities (“ESAs”)

(i) **ESA publishes report on Risks and Vulnerabilities faced by the European Union Financial System for the second half of 2017**

On 12 April 2018 the Joint Committee of the European Supervisory Authorities (“ESAs”) published its report on the ‘Risks and Vulnerabilities in the European Union financial system’ for the second half of 2017 (“**Report**”). The Report focuses on vulnerabilities in the European Union financial system noting that the securities, banking and insurance sectors in the European Union are prone to many risks listing the following containing the most potential to cause instability:

- ▣ Valuations and repricing of risk premia;
- ▣ United Kingdom’s decision to withdraw from the European Union;
- ▣ Cyber and Operational risks – Information and Communication Technology risks; and
- ▣ Climate change.

To combat the risks identified, the Report contains advice from the ESAs on policy actions that European and National Competent Authorities along with financial institutions may take to reduce their exposure such as supervisory stress testing which may be used as a tool to manage systemic risk.

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

(ii) **A multilateral memorandum of understanding reached on co-operation, information exchange and consultation between Joint Committee of ESAs and the EFTA Surveillance Authority**

On 27 April 2018 a multilateral memorandum of understanding (“**MMOU**”) on the co-operation, information exchange and consultation with the European Free Trade Association (“**EFTA**”) Surveillance Authority (“**EFTASA**”) was published by the Joint Committee of the European Supervisory Authorities (“**ESAs**”).

The MMOU contains practical arrangements for co-operation between EFTASAs and the ESAs in a myriad of situations including on product intervention, breach of European Economic Area (“**EEA**”) law and the adoption of specific opinions within EEA-EFTA states.

For more information please find a copy of the MMOU [here](#).

(iii) **ESAs publish their Joint Committee Annual Report 2017**

On 22 May 2018, the ESAs published their joint annual report namely the ‘Joint Committee Annual Report 2017’ dated April 2018. The ESA comprises of the European Banking

Authority, European Insurance and Occupational Pensions Authority and European Securities and Markets Authority.

The Report provides a general outline on the activities of the ESAs in 2017. Of particular note is ESA's progress on combatting money laundering and terrorist financing, the continued efforts to identify risks to financial stability with a focus on Brexit, consumer protection across financial services, their support to the Board of Appeal and its analyses of Big Data in relation to financial innovation.

For further information a copy of the Report is available [here](#).

European Commission

(i) European Commission publishes two directive proposals for “New Deal for Consumers”

On 11 April 2018 the European Commission published two directive proposals and a communication to action the Commission's ‘New Deal for Consumers’ (“**New Deal**”).

The New Deal is an initiative to ensure European consumers are benefiting from their rights granted under European Union law. The inadequacy of the current regime was brought to light in the ‘Dieselgate’ scandal and in two reports – Regulatory Fitness and Performance Programme Fitness Check of European Union Consumer and Marketing law (“**Fitness Check**”) and Consumer Rights Directive evaluation (“**CRD Evaluation**”) published in May 2017, which conducted an extensive evaluation on existing consumer rules. The two new proposals are based on the recommendations made in the Fitness Check and CRD Evaluation and build on the current legislative framework by amending existing Directives.

▣ Proposal 1

The first proposal is for a “Directive on better enforcement and modernization of European Union consumer protection rules” (“**Proposal 1**”). Greater online protection for consumers, effective penalties for infringements calculated by percentage of turnover and individual remedies for victims of unfair commercial practices such as aggressive marketing are some of the amendments proposed for the directive. A copy of Proposal 1 can be accessed [here](#); and

▣ Proposal 2

The second proposal is for “a Directive on representative actions for the protection of the collective interests of consumers, and repealing the Injunctions Directive 2009/22/EC” (“**Proposal 2**”). Proposal 2 will remedy the shortcomings of the Injunctions Directive by introducing stronger sanctions, enabling ‘qualified entities’ launch representative actions to protect the collective interests of consumers and facilitating redress for consumers who are victims of such infringements by

mechanisms such as requiring traders found in judicial proceedings to have breached consumer rights to inform consumers affected by such breaches and explaining to them how to benefit from redress among other actions. Proposal 2 also contains safeguards to prevent the abuse of process by 'qualified entities'. A copy of Proposal 2 can be accessed [here](#).

The proposals also introduce amendments to benefit businesses in areas including the right of withdrawal and information requirements.

The proposals must first be reviewed and approved, amended or rejected by the European Council and Parliament if they are to become Directives.

A Dillon Eustace article on the '*Proposals for a New Deal for Consumers*' can be found [here](#).

(ii) European Commission publishes responses to consultation on Supervisory Reporting

On 23 April 2018 the 381 responses to the European Commission's consultation on the 'fitness check of financial supervisory reporting requirements' published in December 2017 were published. The responses will contribute to efforts improve the usability and consistency of the financial supervisory reporting.

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

(iii) European Commission's Proposed Directive to Protect Whistle-blowers

On 23 April 2018 the European Commission adopted a draft Directive and published a suite of accompanying documents – Commission Communication, Impact Assessment, Fact Sheet and Frequently Asked Questions on the Commission's new commitment to provide whistle-blowers reporting breaches of European Union law with greater protection.

The Directive will provide protection for whistle-blowers across a broad spectrum of industries including financial services, environmental protection, and corporate tax rules by requiring Member States to:

- ▣ Provide safe reporting channels inside the organisation and to public authorities;
- ▣ Protect whistle-blowers from dismissal, demotion and other forms of retaliation;
- ▣ Inform citizens; and
- ▣ Train public authorities.

The accompanying documents explain the benefits to be gained by introducing such legislation particularly to law enforcement agencies in the detection of crime.

The European Commission have invited public feedback on the proposed Directive.

A copy of the proposed Directive is available [here](#), alongside an accompanying Commission Communication [here](#), the Impact Assessment [here](#), the Fact Sheet [here](#) and the Frequently Asked Questions available [here](#).

(iv) European Commission confirms eco-friendly proposals to be tabled in May 2018

On 23 April 2018, Vice President Dombrovskis, European Commissioner for Financial Stability Financial Services and Capital Markets Union's speech titled 'The Transatlantic Economy Ten Years after the Crisis: Macro-Financial Scenarios and Policy Responses' was published by the European Commission.

The speech reflected on the response to the crisis by Europe and the United States, reforms introduced as a result and noted the struggle against climate change as a significant challenge facing the world and a high risk to financial stability. Furthermore, he confirmed that legislative proposals regarding a unified European Union classification of sustainable economic activities and imposing an obligation on insurance companies among others to consider environmental factors in investment decisions would be tabled in May 2018.

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

(v) European Commission publishes final report on distribution systems of retail investment products across the European Union

On 24 April 2018, the European Commission published its final report on distribution systems of retail investment products across the European Union. The objective of the report is to provide facts and figures on the current features and functioning of European markets for retail investment products.

The study shows the difficulties that consumers in the European Union face when trying to buy the most suitable investment fund, life insurance or private pension. Points of note include:

- ▣ Information on nearly all investment products is available on intermediaries' websites in the different Member States. However, the documentation provided is not systematically transparent and is not standardised across countries. This results in the information being difficult to comprehend for less sophisticated retail clients;
- ▣ For each type of investment fund, there are large differences in terms of costs across the Member States; and
- ▣ The average retail investor seeks advice from non-independent advisors via banks and insurers.

The report went on to analyse business and distribution models proposed by on-line investment platforms, e.g. fund supermarkets and on-line brokers, and noted that the potential for new distribution models based on FinTech is promising but must be monitored carefully.

Finally, the report recognised that recent European Union legislation (in particular MiFID II, PRIIPs and Insurance distribution directives) should improve the functioning of the markets for retail investors.

The report may be accessed [here](#) and an accompanying executive summary may be accessed [here](#).

(vi) European Commission publishes proposal for a Regulation on promoting fairness and transparency for business users of online intermediation services

On 26 April 2018, the European Commission published a proposal for a Regulation on promoting fairness and transparency for business users of online intermediation services.

The proposed Regulation seeks to address a number of potentially harmful trading practices that may arise as a result of the dependence of businesses on certain online services (e.g. e-commerce market places, software application stores and social media). For example, the European Commission notes that the providers of such services have a scope to engage in practices that may limit business users' sales through them and risk undermining their trust. Such practices include making unexplained changes in terms and conditions without prior notice and the delisting of goods or services and the suspension of accounts without a clear statement of reasons.

The proposed Regulation also seeks to address the potential for harmful ranking practices as a result of the dependence of businesses on online general search engines.

Points of note within the proposed Regulation include:

- ▣ Providers of online intermediation services will be required to ensure that their terms and conditions for professional users are easily understandable and easily available; and
- ▣ Providers of online intermediation services will be required to set up an internal complaint-handling system.

The European Commission sought feedback from stakeholders on the proposal until 29 June 2018. The proposal may be accessed [here](#).

In addition, Ireland's Department of Business, Enterprise and Innovation sought views on this proposal. The Department sought feedback from stakeholders on the proposal until 22 June 2018, and further details may be accessed [here](#).

(vii) European Commission publishes proposal regarding insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to ensure against such liability

On 24 May 2018, the European Commission published a proposal for a Directive amending Directive 2009/103/EC (the “**Motor Insurance Directive**”) as regards insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to ensure against such liability (the “**Proposal**”).

This Proposal seeks to ensure that victims of motor vehicle accidents receive the full compensation they are due, even when the insurer is insolvent. The revamped rules will also ensure that those who have a previous claims history in another Member State are treated equally to domestic policyholders, and potentially benefit from better insurance conditions.

More specifically, the proposal seeks to amend the Motor Insurance Directive as regards the following issues:

- ▣ The enhancement of the protection of traffic accident victims where the insurer is insolvent;
- ▣ The improvement of the recognition of claims history statements, especially in a cross-border context;
- ▣ Insurance checks to combat uninsured driving;
- ▣ Harmonisation of minimum amounts of cover; and
- ▣ The scope of the directive.

The text of the Proposal is available [here](#) with the accompanying press release and set of FAQs are available [here](#) and [here](#) respectively.

(viii) European Commission proposes new Single Market Programme

On 7 June 2018, the European Commission announced its proposed new Single Market Programme, which aims to empower and protect consumers and enable Europe's small and medium-sized enterprises (“**SMEs**”) to take full advantage of the Single Market. The European Commission is proposing a budget of €4 billion for this programme as part of the next long-term European Union budget, between 2021 and 2027.

The new Single Market Programme aims to:

- ▣ Guarantee the enforcement of consumer rights, particularly online;

- ▣ Strengthen the support given to small business to scale up and expand across borders;
- ▣ Support the safe production of food, improve animal welfare in the European Union, and support the agri-food industry as a leading sector of the European Union economy;
- ▣ Enhance the IT tools used by the Commission to enforce competition rules in the digital economy; and
- ▣ Provide funding to national statistics institutes for the production and dissemination of European statistics in order to improve decision-making across all policy areas.

The Commission, alongside its announcement, published a number of documents which provide more information on the proposal, including:

- ▣ A proposal for a Regulation establishing the Programme for single market, competitiveness of enterprises, including SMEs, and European statistics, available [here](#);
- ▣ A factsheet setting out a summary of the proposed new Single Market Programme, available [here](#); and
- ▣ A factsheet setting out the successes of the European Union Single Market, available [here](#).

An accompanying press release covering the announcement is available [here](#).

(ix) The European Economic and Social Committee publishes opinion on reforms to the ESAs

On 28 June 2018, the European Economic and Social Committee (“**EESC**”) published an opinion on the European Commission proposal to adjust and upgrade the framework of the European Supervisory Authorities (“**ESAs**”) to ensure they can assume an enhanced responsibility for financial market supervision (the “**Opinion**”).

The Commission proposal sets out specific amendments to the ESA Regulations and various sector acts to reinforce the powers, governance and funding framework of the ESAs, and reconsiders the current scope of the ESAs’ mandate in light of the policy objectives of the Capital Markets Union (“**CMU**”).

In its Opinion, the EESC generally welcomes the Commission’s proposal, and emphasises the importance of the realisation of a smoothly operating CMU.

The Opinion is available [here](#). The Commission proposal is available [here](#).

European Systemic Risk Board ("ESRB")

(i) ESRB publishes Occasional Paper No. 15 on responses to stress by banks and insurers

In April 2018, the ESRB published Occasional Paper No. 15 namely '*From the horse's mouth: surveying responses to stress by banks and insurers*' ("**Paper**").

It is one of a series of papers published by the ESRB reporting the results of the macro prudential surveys development by ESRB to identify feedback loops by asking banks and insurers collectively how they would respond to a common adverse scenario that amplifies the initial shock. Unlike existing stress tests, the macroprudential surveys identify feedback loops between individual institutions and the financial system. The Paper aims to provide the results of these fully-fledged macro prudential stress test surveys which can assist financial institutions and supervisors to develop a better understanding of systemic risk.

The survey provides a broad representation of the two sectors by having input from 28 banks and 166 insurance companies with 200% of European Union GDP at the end of 2013. The survey also covered a broad range of questions and answers, however the Paper focuses on the responses received that could create adverse feedback loops in a stressful scenario.

The Paper found that mechanisms used by institutions to restore solvency and liquidity during times of financial crisis included retrenchment of credit supply, excessive risk-taking and liquidity hoarding. More particularly the banks' responses provided evidence of herding into common strategies. In particular these included:

- ▣ Deleveraging – by reductions in credit risk exposures which would cause a substantial reduction in credit supply to corporates;
- ▣ Reliance on retained earnings to improve capital ratios;
- ▣ Widespread disposal of sovereign debt; and
- ▣ Reliance on single contingency measure.

The insurers' responses evidenced a lesser tendency of herding however the survey did find that there are fire sale vulnerabilities due to the large footprint insurers' have in markets. Furthermore some insurers' provided that they would extend the maturity of their assets to cope with a reduction in interest rates which is a problematic action since it would suppress long term yields.

To learn more a copy of the full Paper can be found [here](#).

(ii) ESRB publishes working paper on insurers as asset managers and systemic risk

On 18 May 2018, the ESRB published a working paper on insurers as asset managers and systemic risk.

The Paper proposes a model whereby variable annuity guarantees and associated hedging operate within the regulatory capital framework to incentivise insurers to overweight illiquid bonds thereby inducing correlated investments across financial institutions.

The working paper is available [here](#).

Market Abuse Regulation (“MAR”)

(i) European Union Commission publishes proposal for a Regulation amending the Market Abuse Regulation and the Prospectus Regulation as regards the use of SME growth markets

On 24 May 2018, the European Commission published the text of a proposed Regulation to give small and medium enterprises (“SME”) better access to financing through public markets.

The proposed rules aim to cut red-tape for SME that wish to list and issue securities on SME Growth Markets, a new category of trading venue dedicated to small issuers, and to foster the liquidity of publicly-listed SME shares with the intention of boosting the number of initial public offerings (“IPOs”) by SMEs.

The main proposed changes to SME listings include:

- ▣ Adopting a new definition of debt-only issuers in order to make it easier for trading venues to register as SME Growth Markets;
- ▣ Allowing issuers with at least three years of listing on SME Growth Markets to produce a lighter prospectus when transferring to a regulated market; and
- ▣ Creating a common set of rules on liquidity contracts for SME Growth Markets across the Member States, in parallel to national rules.

The proposed Regulation will now be discussed by the European Parliament and the Council.

The text of the proposed Regulation is available [here](#). An accompanying press release and set of FAQs are available [here](#) and [here](#), respectively.

Prospectus Regulation

(i) ESMA publishes final report on technical advice under the Prospectus Regulation

On 3 April 2018, ESMA issued the final report on technical advice for the new Prospectus Regulation, a follow-up to the three consultation papers issued on the matter in July 2017 (the “**Consultation Papers**”).

Specific technical advice was requested by formal mandate by the European Commission in February 2017 which is addressed in section 3 of the report. The particular advices sought related to the:

- ▣ Format and content of the prospectus;
- ▣ Content, format and sequence of the European Union Growth prospectus; and
- ▣ Scrutiny and approval of the prospectus.

The report also provides a summary of feedback received from stakeholders on the Consultation Papers and ESMA’s response to proposed amendments to their technical advice contained in same.

The report has been delivered to the Commission for review. A copy of the report can be found [here](#).

(ii) Commission publishes roadmap in relation to a delegated regulation to supplement the Prospectus Regulation

On 24 April 2018, the European Commission published a roadmap on their Commission Delegated Regulation supplementing a Regulation on ‘A simplified prospectus for companies and investors in Europe’ 2017/1129 (“**Prospectus Regulation**”).

The roadmap seeks to inform citizens and stakeholders about the Commission’s work in relation to the prospectus initiative and the scope, purpose and timing of the potential new law by setting out the:

- ▣ Context: the delegated act to the new Prospectus Regulation will be necessary because certain of its elements need to be clarified in a delegated act to be adopted by the Commission by 21 January 2019;
- ▣ Problems the initiative aims to tackle: The delegated regulation will complement the “single prospectus rulebook” to ensure that the Prospectus Regulation is interpreted and applied uniformly by national competent authorities;
- ▣ Basis for European Union intervention: The Prospectus Regulation contains articles that empower the Commission to adopt delegated acts;

- ▣ Aims of the initiative and how it will achieve same: A harmonised interpretation and application of the technical details of the new Prospectus Regulation, by complementing the policy framework already laid down;
- ▣ Consultations: Explains the consultations the Commission has carried out that relate to this legislative proposal to build on the Prospectus Regulation; and
- ▣ Evidence base and data collection: Sets out where the evidence was obtained for the initiative.

For further information a copy of the roadmap is available [here](#).

(iii) Amendments adopted by European Parliament as regards proposal for a Regulation on the prospectus to be published when securities are offered to the public or admitted to trading published in the Official Journal of the European Union

On 13 June 2018, the amendments adopted by the European Parliament on the proposal for a Regulation on the prospectus to be published when securities are offered to the public or admitted to trading was published in the Official Journal.

The amendments were made by the European Parliament to the European Commission proposal, and were adopted by the European Parliament on 15 September 2016.

The amended proposal is available [here](#).

The Pensions Authority

(i) Pensions Authority publishes compliance alert on trustee training

On 12 April 2018, the Pensions Authority published a compliance alert on trustee training. The alert sets out employer and trustee obligations regarding training requirements under the Pensions Act (the “**Act**”). Employers and trustees who fail to comply with these requirements may incur a fine.

Employers are obliged under section 59AA of the Act to arrange for scheme trustees to receive appropriate training. The alert briefly addresses what this training should consist of, the time frame within which it is to be provided and that this is an ongoing requirement upon employers.

Trustees are required by section 59AA of the Act to confirm in the scheme’s annual report whether they have received trustee training, and whether any costs in relation to this training were met out of the resources of the scheme.

The alert links to a list of registered training providers and further training resources are available on the website of the Pensions Authority. The alert is available [here](#).

(ii) Pensions Authority issues compliance alert on managing conflicts of interest

On 8 June 2018, the Pensions Authority issued a compliance alert on managing conflicts of interest. The aim of the compliance alert is to remind trustees of their obligations in this regard and recommend some practical actions that may assist trustees with managing conflicts of interest.

In particular, the alert recommends that trustees:

- ▣ Include conflicts of interest as a standard item on the agenda of trustee meetings;
- ▣ Ensure that trustees and advisors are made aware of the obligation to declare any potential conflict of interest in relation to a particular issue being discussed at a trustee meeting;
- ▣ Ensure that where a conflict is identified, the discussion and any decision made at a trustee meeting is properly minuted;
- ▣ Maintain a register of actual, potential or perceived conflicts; and
- ▣ Adopt a conflicts of interest policy.

The compliance alert is available [here](#).

Department of Finance

(i) Cost of Insurance Working Group publishes its Fifth Quarterly Progress Update

On 11 May 2018, the Cost of Insurance Working Group published its Fifth Quarterly Progress Update (the “**Update**”), which provides details of the implementation of the recommendations in relation to two of the Working Groups on-going projects:

- ▣ The implementation of the Report on the Cost of Motor Insurance recommendations (the “**Motor Report**”): the Update reports that only one of the four actions from the Motor Report which had a deadline in the first quarter of 2018 had been met in full however notes that the Working Group is on target to complete two of the three remaining actions in the second quarter of 2018. It also provides that forty of the fifty separate deadlines to implement particular recommendations from the Motor Report have been met.
- ▣ The implementation of the Report on the Cost of the Employer and Public Liability Insurance (the “**Public Liability Report**”): This is the first quarterly progress update to provide information on details relating to the implementation of the Public Liability Report and reports that all eight actions which had a deadline in the first quarter had been successfully completed.

The Update provides an outlook that the pattern of decreasing average motor premiums can be sustained and that the decrease will positively impact insurance premiums in other sectors.

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

(ii) Second Motor Insurance Key Information Report published by the Department of Finance’s Cost of Insurance Working Group

On 11 May 2018, the Department of Finance published the ‘Second Motor Insurance Key Information Report’ (“**Report**”) by the Cost of Insurance Working Group (“**Working Group**”).

This Report, like its precursor, provides information on the factors which affect the cost of motor insurance and is intended to complement and act as a continuation of the first report, published in July 2017. It is the second in a series of Reports to be published by the Working Group to address their 12th Recommendation – to increase transparency in the insurance sector in the interval before the establishment of the National Claims Information Database in an effort to maintain the pattern of decreasing average motor premiums.

The Report contains key aggregated metrics focusing on premium income and the estimated ultimate cost of the motor claims between 2011 and 2016, produced by independent consultants. In particular the Report found that:

- ▣ **Consumer Price Index Inflation:** Motor insurance inflation has stabilised since the third quarter of 2016;
- ▣ **Projected Ultimate Costs for All Claims:** Increased by 2.7% a year between 2011 and 2016 (i.e. 14%);
- ▣ **Projected Ultimate Costs for Injury Claims Costs:** Over 75% of the total claim cost per policy relate to third party injury claims;
- ▣ **Projected Ultimate Costs for Non-Injury Claims Costs:** The average cost of a non-injury claim excluding windscreen claims has been rising faster than CPI inflation and non-injury claim frequency has been decreasing; and
- ▣ **Earned Premium Levels and Exposure:** Insurance companies earned on average a premium per policy which declined by 12% between 2011 and 2013 and increased by 11% in 2015 to 2011 levels before increasing by 22% in 2016.

The information gathered for this Report will be used in the Working Group’s ongoing project – establishing a National Claims Information Database (“**Database**”) which will contain all the relevant data on the elements affecting the cost of motor insurance. The Working Group believe that by establishing the Database it will help resolve the serious volatility in the motor insurance market. The Report can be found [here](#).

Central Bank of Ireland

(i) **The Central Bank publishes feedback statement to Consultation Paper 115 (Branches of third-country insurance undertakings authorised by Central Bank of Ireland)**

On 13 November 2017, the Central Bank published Consultation Paper (“CP”) 115 on Branches of third-country insurance undertakings authorised by Central Bank of Ireland. In CP 115, the Central Bank outlined its proposed approach to the authorisation and supervision of branches of third-country insurance undertakings.

On 3 May 2018, the Central Bank published a feedback statement in response to CP 115 (the “**Feedback Statement**”). The Feedback Statement summarises the responses received to CP115 and notes the Central Bank’s comments and approach. In particular, the Feedback Statement provides clarity on Brexit specific issues for UK entities seeking to establish as a Third-Country Branch within Ireland.

The Feedback Statement is available [here](#). The Central Bank recommends that the Feedback Statement be read in conjunction with CP115, which is available [here](#).

(ii) **FOW Trading Dublin Conference speaker provides insights on the Regulatory Landscape according to the Central Bank’s Director of Asset Management Supervision**

On 3 May 2018, the Director of Asset Management Supervision of the Central Bank, Michael Hodson, delivered a speech at the Futures and Options World (“**FOW**”) Trading Dublin Conference.

Hodson’s speech provided an overview of the regulatory landscape highlighting the extensive changes afoot in the financial regulatory services sectors. The speech focused on the most notable changes and is structured as follows:

- ▣ **Supervisory convergence:** Notes the importance of supervisory convergence, its role in ensuring a level playing field in regulation and supervision across the European Union, and the attention it has garnered recently. Member States need to be responsive and adapt to these changes which include a Supervisory Coordination Network established by ESMA which has monthly meetings to ensure there is no significant difference in treatment between national competent authorities across the European Union. ESMA has also created the Enforcement Network and a senior supervisors’ forum and has published section opinion papers which prompted the Central Bank to update their application forms.
- ▣ **Brexit:** Explains the Central Bank’s approach to Brexit is guided by their mandate of protecting consumers and safeguarding financial stability. A list of the findings of a survey conducted about the potential cliff effects that would stem from a hard Brexit include a loss of market access, macroeconomic effects, staffing issues and passporting rights.

- ▣ **Markets in Financial Instruments Directive 2 (“MiFID II”)**: Spoke of the main aims of MiFID II which came into force four months ago, being to improve the standards of service to clients, increase investor protection and to increase the transparency in the market and highlighted the issues observed in the market since it came into being.
- ▣ **Market Structures** and work the Central Bank’s market surveillance team is undertaking.
- ▣ **Other important topics**: in the asset management sector, including CP86, money market funds regulation and the European Commission’s proposals for a new prudential regime; and
- ▣ **Fintech**: Referred to the Central Bank’s review of FinTech and innovation and initiatives that will be introduced.

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

(iii) **Deputy Governor Donnery delivers speech on diversity**

On 4 May 2018 Deputy Governor Donnery of the Central Bank delivered a speech at the Central Bank of Malta’s fiftieth anniversary conference. The speech pivoted on the need for diversity.

The speech highlights the lack of diversity and the negative financial consequences under the following headings:

- ▣ **Diversity needs to start from the top**: A lack of diversity at senior levels was cited as a contributing factor to the issues that lead to the financial crisis and ongoing problems;
- ▣ **What the Central Bank of Ireland is doing**: Donnery announced that the Central Bank in its supervisory capacity will begin to challenge firms with a lack of diversity at management level;
- ▣ **Should regulation support gender diversity**: While ideally the regulated firms it supervises would voluntarily ensure they have diversity at management level Donnery acknowledges that in the event all supervised firms do not diversify the Central Bank is contemplating imposing diversity requirements at management level; and
- ▣ **The European Dimension**: Donnery notes the European Union’s commitment to diversity and its positive impact on gender equality.

Furthermore, the Central Bank’s first gender pay gap analysis was also unveiled.

For more information a copy of the speech can be found [here](#).

(iv) Gender Pay Gap Report 2018 shows 2.7% difference in pay between men and women at the Central Bank

On 4 May 2018 the Central Bank published its 'Gender Pay Gap Report 2018' (the "**Report**") which contains its first gender pay gap analysis.

The Report echoes Ms. Donnery's speech highlighting the benefit of diversity in the organisation from an economic standpoint. The Report conducted the analysis on annualised base pay of employees as of 1 January 2018.

The Report found that the net income of all males in the Central Bank compared to the net income of all females was 2.7% higher for males – thus it did not relate to different pay for the same job. This figure is attributed to only 39% of directors being female. Other notable findings of the Report included:

- ▣ The gender break down in the Central Bank is 50% male and 50% female;
- ▣ Women made up 49% of division heads; and
- ▣ Women occupy 59% of bank executive and officer roles.

The Report outlined their Diversity & Integration action plan and stated that the Central Bank is undertaking specific actions to address the gender imbalance at senior level.

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

(v) The Central Bank publishes policy notice and guidance for third-country insurance undertakings

On 4 May 2018, Central Bank issued three documents to provide clarity regarding the supervisory process for third-country insurance undertakings. This material is intended to provide clarity on the Central Bank's expectations and to assist undertakings in their on-going compliance with insurance legislation. The documents are as follows:

- ▣ Policy Notice as regards Branches of Third-Country Insurance Undertakings Authorised by the Central Bank of Ireland, which is available [here](#);
- ▣ Handbook for Branches of Third-Country Insurance Undertakings Authorised by the Central Bank of Ireland, which is available [here](#); and
- ▣ Guidance and Checklist for Submitting Applications for Authorisation of a Branch of a Third-Country Insurance Undertaking, which is available [here](#).

(vi) The Central Bank publishes its Annual Report for 2017 revealing a profit of €2.6 billion

On 9 May 2018, the Central Bank published its Annual Report for 2017 (“**Report**”). The Report details the primary achievements and activities undertaken by the Central Bank in 2017 across their central banking, regulatory and operational functions as well as commenting on the implementation of the Central Bank’s strategic plans. The Report also provided updates on:

- ▣ **Economic Recovery:** Provides that the ongoing recovery is expected to continue at Irish, European and global levels however cautions that Ireland’s economy has an inherent vulnerability as a consequence of its highly globalised nature, therefore ongoing vigilance of the Irish macro-financial system is necessary;
- ▣ **Brexit:** Highlights the major challenges and risks facing the Irish economy and regulated firms, noting that an increased number of firms establishing a presence in Ireland is expected;
- ▣ **Enhanced Resources:** Details the work undertaken in financial regulation and the enhancement of its resources in key areas with improvements also made to its regulatory toolkit;
- ▣ **Tracker Mortgage Examination:** Notes that considerable progress was made in 2017 in delivering redress and compensation to over 37,000 customers and provides that completion of the examinations is a high priority of 2018; and
- ▣ **Profit:** Discloses the profit of 2017 as €2.6 billion.

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

(vii) The Central Bank calls for public’s input in its Strategic Plan for 2021

On 9 May 2018, the Central Bank published a document ‘Strategic Plan 2019-2021 - We Want Your Views’ calling for public input on the following three questions:

- ▣ What should be considered by the Central Bank responding to the current and emerging risks in the economy and the wider financial system?
- ▣ What should the Central Bank focus on in terms of the regulation of firms and markets?
- ▣ What should be considered by the Central Bank in respect of its financial conduct and consumer protection role?

The deadline for responses was 8 June 2018.

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

(viii) Central Bank of Ireland publishes May 2018 edition of Intermediary Times newsletter

On 31 May 2018, the Central Bank published the May 2018 edition of its 'Intermediary Times' newsletter. This edition contains information on the following topics:

- ▣ The launch of the Central Bank's FinTech Engagement Initiative, which includes the introduction of an Innovation Hub at the Central Bank;
- ▣ Information regarding the appointment of tied agents under the Investment Intermediaries Act, 1995;
- ▣ A short piece on the submission of Annual Returns;
- ▣ Cyber Security and protecting the firm;
- ▣ Pricing complaints; and
- ▣ The Investor Compensation Company Limited.

The newsletter aims to highlight topics of interest, new items on the Central Bank's website and regulatory issues that retail intermediary firms need to be aware of.

The newsletter may be accessed [here](#).

(ix) The Central Bank publishes Insurance Quarterly for June 2018

On 1 June 2018, the Central Bank published its Insurance Quarterly newsletter. The newsletter contains articles on the following topics:

- ▣ Competency in risk culture;
- ▣ Questions to be considered by (re)insurance undertakings in preparation for the UK's withdrawal from the European Union; and
- ▣ Observations on "look-through" reporting under Solvency II.

The newsletter is available [here](#).

(x) The Central Bank updates Aggregate Statistical Data templates under Solvency II

The Central Bank has updated Templates C and D of the Aggregate Statistical Data for 2017 under Solvency II. The supervisory authorities are obliged to disclose certain information publicly. The use of such templates ensure that the information disclosed in accordance with Solvency II is easily accessible and comparable, and they foster accountability and transparency across European Union/EEA supervisors.

The updated templates are available [here](#).

(xi) Central Bank publishes Macro-Financial Review

On 15 June 2018, the Central Bank published its first Macro-Financial Review of 2018 (“**Review**”), setting out an overview of the health of the macro-financial environment in Ireland and identifying risks to the economy and financial system.

The Review includes observations that the domestic economy is growing significantly however cautions the hazards that may accompany Brexit providing examples such as United Kingdom insurance firms losing their entitlement to do business in Ireland and difficulties banks may face if they need to issue debt through the United Kingdom.

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

(xii) Consultation Paper on the Central Bank’s Market Abuse and Transparency Rules published

On 22 June 2018, the Central Bank published its Consultation Paper titled ‘CP-121 Consultation on amendments to Central Bank Market Abuse and Transparency Rules and consolidation into Central Bank (Investment Market Conduct) Rules’.

The Consultation Paper proposes to consolidate into one statutory instrument the Central Bank’s transparency rules and market abuse rules subject to certain amendments, pursuant to the Companies Act 2014 and requests feedback from stakeholders in relation to the seven questions asked. The amendments proposed in the Consultation Paper relate to the addition of requirements including a requirement to use Legal entity identifiers to ensure the effective supervision of transparency law. The Consultation Paper also contains the draft rules in the Annex.

The deadline for responses is 22 September 2018.

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

(xiii) The Central Bank publishes 2018 Report on Protected Disclosures

On 29 June 2018, the Central Bank published its Protected Disclosures Report for 2018. According to the 2018 Report, the Central Bank received 113 protected disclosures during the reporting period 1 July 2017 to 30 June 2018.

The 2018 Report is available [here](#).

(xiv) The Central Bank's first cyber-fraud fine

Appian Asset Management Limited (“**Appian**”) has been fined €443,000 for regulatory failures which, according to the Central Bank, left it exposed to cyber-fraud.

This is the first time that the Central Bank has issued a fine concerning a cyber fraud.

Due to the fraud, €650,000 of client funds was lost. The Central Bank concluded that this fraud resulted from defective controls in three regulatory areas:

- ❑ Inadequate policies and procedures to monitor transactions;
- ❑ Failure to introduce adequate organisational arrangements to minimise the risk of loss of clients assets due to fraud under the Central Bank's Client Asset Requirements 2007; and
- ❑ Failure to ensure that an employee performing a role that might expose Appian to financial, consumer or regulatory risk was fit for that role under the Central Bank's Fitness and Probity regime.

For further information on the Central Bank's focus on cyber risk, please refer to the following briefing issued by Dillon Eustace, available [here](#).

(xv) Fitness and Probity Standards benefit from suite of guidance documentation from Central Bank

In June 2018, the Central Bank published a suite of documents relating to Fitness and Probity (“**F&P**”) Standards. The documents published were as follows:

- ❑ ‘Fitness and Probity Individual Questionnaire Application Guidance – June 2018’ (“**IQ**”): This document is designed to provide regulated financial service providers and applicant firms with assistance when submitting Individual Questionnaires through the Online Reporting System (“**ONR**”) of the Central Bank for individuals proposed to hold Pre-Approval Controlled Functions. A copy is available [here](#);
- ❑ ‘Online individual questionnaire template 2018’: This document sets out the questions that make up the online individual questionnaire in PDF form. A copy is available [here](#);
- ❑ ‘Fitness and Probity – Frequently Asked Questions (“**FAQ**”): This document amends the existing FAQs document at Sections 1.3, 3.6, 5.4 and 6.8. A copy is available [here](#); and
- ❑ ‘Guidance on Fitness and Probity Standards 2018’: This document assists regulated financial service providers comply with their obligations in relation to the F&P Standards as set out in Section 21 of Part 3 of the Central Bank Reform Act 2010 which requires financial service providers to have satisfied themselves on reasonable grounds that the persons performing as Controlled Functions or Pre-approval Controlled Functions are compliant with F&P Standards. A copy is available [here](#).

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

(i) **Summary of responses to the consultation on broadening law enforcement access to centralised bank account registries published by European Commission**

On 17 April 2018, a summary of responses to the open public consultation on ‘broadening law enforcement access to centralised bank account registries’ was published by the European Commission.

The summary of these responses along with a list of the responses can be accessed [here](#).

(ii) **Proposal for a Directive to give access to centralised bank account registries**

On 17 April 2018, a proposal for a Directive laying down the rules facilitating the use of financial and other information for the prevention, detection, investigation and prosecution of certain criminal offences and appealing Council Decision 2000/642/JHA was published by the Commission (“**Proposal**”).

The Proposal provides for direct access to the national centralised bank account registries or data retrieval systems to competent authorities. The Explanatory Memorandum of the Proposal notes that the Proposal is to complement the Fifth Money Laundering Directive which contains a mandatory provision for the establishment of national centralized bank account registries or data retrieval systems in all Member States to which Financial Intelligence Units and Anti-Money Laundering Authorities would have access. The Proposal therefore seeks to enable competent authorities to carry out this mandatory obligation.

For further information on the Proposal please find a link to the document [here](#).

(iii) **Ireland publishes Bill to transpose the Fourth Money Laundering Directive**

On 24 April 2018, the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2018 (“**Bill**”) was approved by the Irish Cabinet on 24 April 2018 and will be presented to the Dáil on 3 July 2018. The Bill will transpose most of the Fourth Money Laundering Directive into Irish law and amends the Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 and 2013.

The Bill seeks to enact the key provisions of Fourth Money Laundering Directive (“**MLD4**”) by placing more onerous obligations in relation to money laundering and terrorist financing on entities including credit and financial institutions, lawyers, accountants and high value goods dealers in the following manner:

- ▣ **Conducting risk assessments:** The Bill provides a non-exhaustive list of factors to be considered by financial institutions when assessing the money laundering and terrorist financing risk of a customer or transaction;

- ▣ **Due Diligence:** The Bill introduces a requirement for due diligence to be exercised when a money laundering or terrorist financing risk warrants it in addition to the occasions already provided;
- ▣ **Policies and Procedures:** More expansive policies and procedures will be required by the designated person for the prevention and detection of money laundering and terrorist financing along with groups of companies having to introduce such policies and procedures group-wide including companies in the group that are not in the European Union;
- ▣ **Legal Services** are exempt from requiring anti-money laundering information from client if they are in the process of ascertaining it or if they are representing them in legal proceedings;
- ▣ **High Value Goods Dealers;** Reduced cash payment threshold from €15,000 to €10,000 to bring such dealers within the scope of the Directive;
- ▣ **Correspondent Relationships** which were already prohibited between banks are now prohibited between financial institutions also;
- ▣ **Enforcement:** Changes proposed include a - requirement on designated persons to report transactions connected with high-risk third countries to the Financial Intelligence Units (“**FIU**”), a new Chapter 3A to the 2010 Act is inserted detailing FIUs powers to receive and analyse information and accessing the central beneficial ownership registers of corporations and trusts, an ability on the Garda Síochána to keep the due diligence records beyond the five year period in certain circumstance and an update to the monetary penalties that may be imposed by the Central Bank for anti-money laundering breaches.

The latest copy of the Bill, dated 21 June 2018, is available [here](#). For further information the explanatory memorandum of the Bill can be found [here](#).

(iv) **Press Release of FATF's 2018 private sector consultative forum published**

On 24 April 2018, a press release detailing the issues discussed at the Financial Action Task Force (“**FATF**”) annual private sector consultative forum was published. The forum, held in Vienna on 23 and 24 April 2018, provided private sector representatives the opportunity to engage directly with the FATF on issues relating to anti-money laundering and counter-terrorist financing issues.

The issues discussed included combatting de-risking, finTech and regTech and the current development of guidance for a risk based approach in the securities and banking sector. An additional summary of the discussions has been published by FATF on the standalone issues of fintech and regtech, which can be found [here](#).

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

(v) European Commission adopts Delegated Regulation on Central Contact Points

On 7 May 2018 a Delegated Regulation containing regulatory technical standards (“**RTS**”) for central contact points (“**CCP**”) under the Fourth Money Laundering Directive (“**MLD4**”) was adopted by the European Commission.

The Delegated Regulation aims to ensure legal certainty across the European Union for Member States when determining whether a CCP is required to be appointed for electronic money issuers and payment service providers.

Unless the Council of the European Union or the European Parliament object to it, the Delegated Regulation will enter into force twenty days after it is published in the Official Journal of the European Union.

For further information a copy of the Delegated Regulation is available [here](#).

(vi) FATF Executive Secretary delivers speech on fighting proliferation financing

On 16 May 2018, the FATF Executive Secretary David Lewis, delivered a speech to the Proliferation Security Initiative (“**PSI**”) at the High Level Political Meeting 2018 on the ‘Best Practices and Guidelines on the Fight Against Proliferation Financing – Strengthening Authorities for Action’ (“**Speech**”).

Amongst other things the Speech covered:

- ▣ How FATF has been equipping countries to support themselves in their fight against financing proliferation which began in 2008 and includes the proliferation of weapons of mass destruction;
- ▣ That financial measures are one of the most effective tools to counter proliferation;
- ▣ Lessons learnt from the FATF Mutual Evaluation Process in which two common weakness were observed – a lack of inter-agency cooperation and coordination and secondly, that many jurisdictions are only focusing on sanctions’ implementation but not preventative measures; and
- ▣ The guidance the FATF has been providing to its Members.

For further information please find a copy of the Speech in full [here](#).

(vii) Consolidated Assessment Ratings on the Compliance and Effectiveness of the 2012 FATF Recommendations - Mutual Evaluations Publications

On 18 May 2018, the FATF published a document containing an up-to-date overview of the effectiveness and compliance with their 2012 FATF Recommendations. A copy of the document can be found [here](#).

(viii) Central Bank publishes Anti-Money Laundering Bulletin – the Investment firm edition

On 30 May 2018, the Central Bank published its fourth issue of its Anti-Money Laundering bulletin (“**Bulletin**”). This bulletin focuses on the findings of the Central Bank’s supervisory engagements with investment firms. The Central Bank sets out its findings in the following three areas:

- ▣ **Anti-money laundering (“AML”)/Counter Terrorist Financing (“CTF”) Risk Assessments:** Several AML/CFT risk assessments failed to tailor the assessment to the specific money laundering or terrorist financing risks facing the firm, utilising predefined standard group templates, and many were out of date;
- ▣ **Politically Exposed Persons (“PEP”) screening and transaction monitoring;** Findings included that firms had inadequate controls in place to ensure all customers were subject to regular PEP and Financial Sanction (“**FS**”) screening to identify any changes in PEP status, or any potential FS exposure; and
- ▣ **Resourcing and training:** There has been a lack of permanence in the position of Head of Compliance with responsibility for AML/CFT resulting in the failure of firms to initiate improvements in their processes or pausing ongoing projects, while many firms rely on a generic training programme alone for AML/CFT and consequently staff are not sufficiently equipped to deal with money laundering or terrorist financing risks.

For further information a copy of the Bulletin is available [here](#).

(ix) EU joins Council of Europe anti-terrorism conventions

On 4 June 2018, two Council Decisions regarding the Council of Europe Convention on the Prevention of Terrorism (the “**Convention**”) were published in the Official Journal of the European Union:

- ▣ Council Decision (EU) 2018/889 of 4 June 2018 on the conclusion, on behalf of the European Union, of the Council of Europe Convention on the Prevention of Terrorism, available [here](#).
- ▣ Council Decision (EU) 2018/890 of 4 June 2018 on the conclusion, on behalf of the European Union, of the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, available [here](#).

The Convention and its Protocol will enter into force in respect of the European Union on 1 October 2018. The text of the Convention is available [here](#), and the Additional Protocol is available [here](#).

(x) European Commission demonstrates its commitment to the Iran Nuclear Deal through adoption of Delegated Regulation to the Blocking Regulation

On 6 June 2018, the European Commission adopted a draft Delegated Regulation amending the Annex to Council Regulation 'protection against the effects of extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom' ("**Blocking Regulation**").

The Delegated Regulation will amend the Annex to the Blocking Regulation by including the United States' restrictive measures having extra-territorial application and which are in force at the date of its adoption to the Annex. The Delegated Regulation is a direct response to President Trump declaring that the United States will withdraw their waiver of their sanctions under the Joint Comprehensive Plan of Action. These sanctions punish both United States companies and persons along with non-United States persons in certain circumstances, where they engage in a commercial relationship with Iran.

The Delegated Regulation by adding the United States' measures to the Annex will protect citizens and undertakings in the European Union from any sanctions contained in the measures listed in its Annex rendering amongst other things any judgment made against European citizens or undertakings in this context unenforceable thereby enabling European companies and citizens to continue doing business with both the United States and Iran without risk of severe penalties being imposed on them by the government of the United States.

Following the adoption by the European Commission of the Delegated Regulation the European Parliament and the Council will now be allotted two months to object to the Delegated Regulation. Where no objection is raised in this time frame the Delegated Regulation will enter force at the beginning of August.

For further information a copy of the Delegated Regulation is available [here](#).

(xi) Directive on countering money laundering by criminal law endorsed by COREPER

On 7 June 2018 the 'Committee of the Permanent Representatives of the Governments of the Member States to the European Union' ("**COREPER**") endorsed the informal triologue agreement between European Parliament, Council and Commission negotiators for a Directive on countering money laundering by criminal law reached on 30 May 2018.

The proposed Directive will (i) harmonise the definitions and sanctions for criminal offences related to money laundering across the European Union, (ii) bring the European Union law in line with its international obligations and (iii) facilitate more seamless cross-border judicial and police co-operation. Provisions in the proposed Directive include introducing a four year prison sentence for money laundering convictions with judges having the discretion to impose additional sanctions such as fines. Cases linked to organised crime or where the perpetrator committed the crime in their professional capacity will be considered aggravating

circumstances. Legal entities will be subject to more stringent sanctions where they are implicated in certain money laundering activities including judicial winding-up.

Before the proposed Directive is enacted the European Parliament's Civil Liberties Committee must vote on the agreed text and then the Directive must be formally adopted by both the European Parliament and Council. It will then enter force twenty days after being published in the Official Journal of the European Union.

For further information please find a copy of the proposed Directive [here](#).

(xii) European Commission publishes report on restrictions on payments in cash

On 12 June 2018, the European Commission published a report that examined the impact of potential cash payment restrictions. The report follows a study commissioned by the Commission on the topic, which found that restrictions on payments in cash would not significantly prevent terrorism financing, but indicated that such restrictions could be useful in combatting money laundering.

The report concluded that at this stage, the Commission is not considering any legislative initiative on this matter. Restrictions on cash payments are a sensitive issue for European citizens, many of whom view the possibility to pay in cash as a fundamental freedom, which should not be disproportionately restricted.

The report is available [here](#).

(xiii) The Fifth Money Laundering Directive to come into force on 9 July 2018

On 19 June 2018, the text of the 'Directive (European Union) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC' ("**MLD5**") was published in the Official Journal of the European Union. This follows the Council of the European Union having adopted MLD5 on 14 May 2018 and the European Parliament voting in plenary to adopt MLD5 on 19 April 2018.

MLD5 fine tunes aspects of the Fourth Money Laundering Directive focusing on countering terrorist financing and increasing transparency in financial transactions. It sets about achieving these twin aims by:

- ▣ Introducing Centralised Beneficial Ownership Registers;
- ▣ Enhancing due diligence requirements for individuals from 'risky countries';
- ▣ Providing access to all citizens to the beneficial register of all companies to quash the corrupt use of letterbox companies created to launder money, hide wealth and avoid paying taxes;

- ▣ Extending the scope of industries subject to the MLD5;
- ▣ Reducing the threshold to €150 for due diligence requirements on prepaid cards;
- ▣ Regulating crypto currencies such as bitcoin;
- ▣ Enhancing the powers of European Union Financial Intelligence Units (“**FUIs**”); and
- ▣ Providing greater protections for whistle blowers.

On 9 July 2018, MLD5 will come into force thereby requiring Member States to transpose the legislation by no later than 10 January 2020.

A copy of MLD5 is available [here](#).

For further information on MLD5, please refer to the following briefing issued by Dillon Eustace, available [here](#).

(xiv) European Parliament and Council reach political agreement on proposed Regulation on the freezing and confiscation of assets across borders

On 20 June 2018, the European Parliament and Council reached political agreement on the European Commission’s proposal for an EU Regulation on the freezing and confiscation of assets across borders. Features of the new Regulation include the introduction of:

- ▣ A single set of rules on freezing and confiscation orders directly applicable throughout the European Union;
- ▣ Standard certificates and procedures to allow for speedy and efficient freezing and confiscation actions;
- ▣ A deadline of 45 days for the recognition of a confiscation order and in urgent cases a deadline of 48 hours for the recognition and 48 hours for the execution of freezing orders; and
- ▣ The general principle of mutual recognition, meaning that all judicial principles in criminal matters taken in one European Union country will normally be directly recognised and, enforced by another Member State.

Following this political agreement, the text of the Regulation will have to be formally approved by the European Parliament and the Council.

A press release by the Council of the European Union setting out the features of the new rules in more detail is available [here](#) and a statement by the European Commission welcoming the agreement is available [here](#).

(xv) Outcomes of the FATF-MENAFATF Joint Plenary

Between 24 and 29 June 2018, FATF and the Middle East and North Africa Financial Task Force (“**MENAFATF**”) held a series of meetings to discuss how the integrity of the global financial system may be protected. The meetings brought together delegates from the 203 jurisdictions of the FATF Global Network and from the IMF, World Bank, UN and other partners.

The week of meetings concluded with a joint plenary meeting held in Paris. The discussions during the Plenary focused on:

- ▣ Counter-terrorist financing;
- ▣ Judges and Prosecutors;
- ▣ Bahrain and Saudi Arabia; and
- ▣ Engagement between FATF and the FinTech and RegTech sectors.

Furthermore, FATF members discussed and approved the priorities for July 2018 to June 2019.

A summary of the Joint Plenary’s outcomes may be found [here](#).

(xvi) Council of the European Union endorses agreement on Regulation on controls on cash entering or leaving the Union

On 27 June 2018, the EU’s Committee of Permanent Representatives (“**COREPER**”) endorsed an agreement between the Council of the European Union and the European Parliament on a draft Regulation aimed at improving controls on cash entering or leaving the Union. It replaces the Cash Controls Regulation (Regulation 1889/2005), which has applied since 2007.

The objective of the Regulation is to ensure that the latest developments in international standards on combating money laundering and terrorism financing developed by FATF are reflected in EU legislation.

The Council and the European Parliament will now need to vote to adopt the draft Regulation after which it will be published in the Official Journal of the European Union.

A press release announcing the agreement is available [here](#). The text of the draft Regulation, dated 25 June 2018, is available [here](#).

(xvii) FATF issues list of jurisdictions subject to its global AML/CFT compliance process

On 29 June 2018, FATF issued a list of jurisdictions that have strategic anti-money laundering (“**AML**”)/Counter-Terrorism Financing (“**CTF**”) deficiencies for which they have developed an action plan with FATF.

Each jurisdiction has provided a written high-level political commitment to FATF to address the identified deficiencies and FATF will closely monitor the implementation of these action plans. The jurisdictions with strategic deficiencies are as follows:

- ▣ Ethiopia;
- ▣ Pakistan;
- ▣ Serbia;
- ▣ Sri Lanka;
- ▣ Syria;
- ▣ Trinidad and Tobago;
- ▣ Tunisia; and
- ▣ Yemen;

The following jurisdictions are no longer subject to FATF’s on-going global AML/CFT compliance process:

- ▣ Iraq; and
- ▣ Vanuatu

More information on each of the identified jurisdictions is available [here](#).

(xviii) FATF issues statement regarding DPRK and Iran

On 29 June 2018, FATF issued a public statement on the Democratic People’s Republic of Korea (“**DPRK**”) and Iran.

- ▣ Regarding DPRK, FATF stated that the jurisdiction is subject to a FATF call on its members and other jurisdictions to apply counter-measures to protect the international financial system from ongoing and substantial money laundering and financing of terrorism risks; and

- ▣ Regarding Iran, FATF stated that the jurisdiction is subject to a FATF call on its members and other jurisdictions to apply enhanced due diligence measures proportionate to the risks arising from the jurisdiction.

The statement is available [here](#).

Anti-Corruption Legislation

(i) **Criminal Justice (Corruption Offences) Act 2018 enacted**

On 5 June 2018, the Criminal Justice (Corruption Offences) Act 2018 (“**Act**”) was enacted. The Act forms part of the Government’s White Collar Crime package announced in 2017. The Act repeals the seven existing Irish anti-corruption laws, dating from as early as 1889 and as recent as 2010. The Act will replace them with a single comprehensive statute and introduce new offences and stronger penalties including imprisonment for up to ten years, an unlimited fine, forfeiture of any bribe and forfeiture of office and prohibition on seeking office for up to ten years for public officials. The new offences include:

- ▣ Trading in influence;
- ▣ Corporate liability offence – where a body corporate may be guilty of an offence if anyone acting on behalf of that body is found guilty of a corruption offence;
- ▣ The presumption of a corrupt donation is expanded making failures to disclose or return a donation grounds for the presumption to apply – recommended by the Mahon Tribunal;
- ▣ The presumption of corrupt gifts is extended to connected persons – recommended by the Mahon Tribunal;
- ▣ Intimidation – where a threat of harm is used instead of a bribe; and
- ▣ Creating or using false documents – required by most International Conventions.

The Act incorporates the six recommendations of the Mahon Tribunal Report and also includes the recommendations made to Ireland specifically from the Organisation for Economic Cooperation and Development (“**OECD**”), the European Union, the Council of Europe and the United Nations along with international anti-corruption conventions of which Ireland is a member. These conventions include:

- ▣ The Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (1997);
- ▣ OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997);

- ▣ Council of Europe Criminal Law Convention on Corruption (1999 and 2003); and
- ▣ United Nations Convention Against Corruption (2003).

For further information on the Act please find a copy of the text [here](#) and an article on the topic published by Dillon Eustace [here](#).

Data Protection / General Data Protection Regulation (“GDPR”)

(i) Article 29 Working Party publish updated guidelines on consent for GDPR

On 10 April 2018 the Article 29 Working Party published its final guidance on consent under the General Data Protection Regulation (“GDPR”) (the “Guidance”).

The Guidance is an update on the draft guidance published on 28 November 2017 and contains some changes to and/or additional commentary on certain aspects of consent including:

- ▣ *Bundling of consent* – The Guidance provides it will not be valid consent merely because there are competing services the user could choose from;
- ▣ *Granular consent* – The Guidance provides it is not present where one consent is asked for two different data processing activities;
- ▣ *Detriment* – The Guidance adds examples of when detriment will be deemed present from withholding consent;
- ▣ *Recapturing consent* – The Guidance changes its position whereby a child’s consent would expire if not reaffirmed when they reach the age of 16; the 16 year old will now actively have to withdraw consent.

For more information a copy of the Guidance can be found [here](#).

(ii) Article 29 Working Party publish Guidelines on Transparency for the GDPR

On 11 April 2018 the Article 29 Working Party published guidelines on transparency required under Article 13 and 14 of the GDPR (the “Guidelines”).

The Guidelines are a revision of the draft guidelines published in December 2017 which were open to consultation. The Guidelines reiterate much guidance provided in the draft guidelines however also contains minor changes and updates on various aspects of transparency including:

- ▣ **Naming recipients of data:** This obligation is less onerous than in the draft guidelines and now only requires the name of “meaningful recipients” to be provided to the data subject;

- ▣ **International Transfers:** The draft guidelines required all third countries receiving personal data to be named, however now requires “meaningful” detail on third country transfers to be disclosed;
- ▣ **Clarity on layered approach:** The Guidelines add an explanation on how the layered approach can be used in a non-digital environment; and
- ▣ **Privacy Notices:** The draft guidelines provided practical examples of poor practices that do not satisfy the GDPR’s requirement of policies containing “clear and plain language” thus the Guidelines contain examples of good practice.

For more information a copy of the Guidelines can be found [here](#).

(iii) Article 29 Working Party issue Working Document to establish a Co-Operation Procedure for the approval of "Binding Corporate Rules" under the GDPR

On 11 April 2018 the Article 29 Working Party issued a working document setting forth a co-operation procedure for the approval of Binding Corporate Rules (“**BCR**”) for controllers and processors under the **GDPR** (the “**Working Document**”).

The Working Document aims to provide effective cooperation procedures for Supervisory Authorities in different Member States that are GDPR compliant whilst taking into consideration their past experiences when an application for a Binding Corporate Rules are made. The Working Documents provide a process for identifying the BCR Lead supervisory authority which will be the main point of contact of the undertaking and the cooperation procedure between Supervisory Authorities when approving BCRs.

For further information a copy of the Working Document can be found [here](#).

(iv) European Commission Adopts Recommendation on the Standard Application for Approval of Controller Binding Corporate Rules for the Transfer of Personal Data

On 11 April 2018 the Article 29 Working Party published their Recommendation on the ‘Standard Application for Approval of Controller Binding Corporate Rules for the Transfer of Personal Data’ (the “**Recommendation**”).

The Recommendation provides a form to be filled out by data controlling companies seeking approval of their BCRs. The form is constructed in a manner to assist applicants demonstrate how they meet the requirements set out in Article 47 of the GDPR. The form is split into two parts:

- ▣ Application form; and
- ▣ Background information.

For information on the recommendation and a link to the form please click [here](#).

(v) High Court makes request for a Preliminary Ruling from the CJEU on Model Clauses

On 12 April 2018, the Irish High Court asked the Court of Justice of the European Union (“CJEU”) for a preliminary ruling on whether the use of “Model Clauses” to facilitate data transfers is legal. The Irish Data Protection Commission posed 11 questions to the CJEU about the way data is transferred outside of the EU in this manner, and whether this is in compliance with EU data protection laws.

The case in question has been taken by the Irish Data Protection Commissioner, and follows a legal challenge by lawyer and privacy campaigner, Max Schrems regarding the transfer of his personal data by Facebook, outside of the EU, by means of “Model Clauses”.

A copy of the request made by the Irish High Court to the CJEU is available [here](#).

(vi) Article 29 Working Party publishes Statement on Encryption as a method to protect European citizens’ privacy

On 13 April 2018, the Article 29 Working Party published a statement on the impact of encryption on the protection of individuals regarding processing their personal data in the European Union (the “Statement”).

Law enforcement agencies, whose obligations can require access to encrypted data must ensure that their duties do not reduce the effectiveness of encryption techniques as that can seriously harm the privacy of European citizens. The Statement notes that:

- ▣ Strong and reliable encryption is necessary;
- ▣ Master keys and backdoors deprive encryption of its utility and cannot be used in a secure manner; and
- ▣ Law enforcement agencies should only have proportionate and targeted access under the control of the judiciary to data and should not be provided with ‘master keys’ or ‘backdoors’ to carry out their functions.

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

(vii) ESMA requests further clarity on draft guidelines regarding derogations under Article 49 of the GDPR

On 13 April 2018, a response to the Article 29 Working Party’s February consultation on draft guidelines on Article 49 of the GDPR was published. The guidelines related to derogations for the transfer of personal data to ‘third countries’.

ESMA’s response was generally supportive of the draft guidelines however it cautioned that clarifications will need to be made in the guidelines regarding “public interest derogations” and their application to financial supervisors’ legal statutes, missions or

objectives. As international co-operation between European Union and non-European Union financial supervisors is essential to achieve effective financial supervision, the derogations must be broad enough to enable European Union financial supervisors to fulfil their missions, whilst complying with applicable European Union data protection requirements.

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

(viii) Press Release on the Article 29 Working Party's April Plenary Meeting Published

On 19 April 2018, a press release was issued by the Article 29 Working Party following its April plenary meeting which highlights the four major topics addressed at the meeting:

- ▣ Published documents including guidelines on consent, transparency and the urgency procedure, revised Binding Corporate Rules (“**BCR**”) forms and the working document on BCR approval;
- ▣ Establishment of a social media working group to develop a long-term strategy to prevent Facebook and Cambridge Analytica scenarios occurring again;
- ▣ Adopted an opinion on the interoperability between European Union information systems for borders, visas and police cooperation, a statement on encryption and addressed letters to the European Union Commissioner among others in relation to compliance with the GDPR; and
- ▣ Reviewed of ongoing work of Article 29 and its mandates.

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

(ix) Position paper published on the ‘derogations from the obligation to maintain records of processing activities pursuant to Article 30(5) of the GDPR

On 19 April 2018, the Article 29 Working Party published its position paper on the ‘derogations from the obligation to maintain records of processing activities pursuant to Article 30(5) of the GDPR (the “**Position Paper**”).

Article 30(5) of the GDPR provides that the obligation to keep a record of processing activities does not apply to organisations employing less than 250 people save for certain circumstances. The Position Paper provides an interpretation of the derogating provision and offers its opinion for when companies with fewer than 250 employees will not benefit from the derogation and be required to maintain a record of processing activities. Such opinions include that the derogation under Article 30(5) is not absolute and will not absolve an organisation from their obligation when processing data in three scenarios:

- ▣ Processing that is likely to result in a risk to the rights and freedoms of data subjects;

- ▣ Processing that is not occasional; and
- ▣ Processing that includes special categories of data or personal data relating to criminal convictions and offences.

The Position Paper provides examples of processing which falls into the above three categories.

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

(x) Questions and Answers published for first European Union-wide legislation on cybersecurity – Directive on Security of Network and Information Systems

On 4 May 2018, the European Commission published a Questions and Answers document (“**Q&A**”) on the ‘Directive on Security of Network and Information systems’ (the “**NIS Directive**”) to assist Member States transpose the directive by the deadline of 9 May 2018 having come into force in August 2016.

The NIS Directive is the first European Union wide legislation to come into force on cybersecurity. The chief aim of the NIS Directive is to achieve a consistent and high level of cybersecurity of information and network systems across the European Union. The NIS Directive sets about achieving this aim by:

- ▣ Increasing Member States’ capabilities of ensuring cybersecurity;
- ▣ Increasing European Union level cooperation;
- ▣ Imposing incident reporting and risk management obligations on operators of essential and digital services.

The Q&A contains answers to the following questions, a summary of some such answers is provided below:

- ▣ How are Member States improving their national cybersecurity capabilities?
- ▣ How will Member States cooperate under the NIS Directive?
- ▣ How does the cooperation group function? What has it achieved so far?
- ▣ How does the Computer Security Incident Response Team network function?
- ▣ What are operators of essential services, and what will they be required to do?

They include private businesses and public entities which have an important role to provide security in healthcare, transport, energy, banking, financial market infrastructure, digital infrastructure and water supply. They are required to prevent risks,

ensure network and information systems are secure and must handle incidents appropriately.

- ▣ How will Member States identify operators of essential services?
- ▣ Which sectors does the Directive cover? The list includes credit institutions, trading venues, central counterparties and internet exchange points among the sectors covered by the NIS Directive.
- ▣ What kind of incidents should be notified by the operators of essential services?
- ▣ What are digital service providers and do they have to notify cyber incidents?
- ▣ What are the obligations for digital service providers?
- ▣ What is the timeline for implementation of the Directive?

The NIS Directive provides Member States until 9 November 2018 to identify the particular entities which will qualify as “operators of essential services” requiring such entities to implement the appropriate security measures.

For more information please find a copy of the Q&A document [here](#).

(xi) Corrigendum revising Article 37 of the GDPR

On 4 May 2018, the European Parliament published a corrigendum to the GDPR.

While the majority of the changes made to the GDPR simply clarify the existing text, it is worth noting that the corrigendum revises Article 37 of the GDPR which relates to the requirement to appoint a data protection officer (“DPO”) in certain circumstances.

In particular, while the original text of the GDPR indicated that it was necessary for a data controller or a data processor to appoint a DPO where its core activities involved the processing on a large scale of (i) special categories of personal data and (ii) personal data relating to criminal convictions and offences on a large scale, the corrigendum has revised this text to provide that a DPO must be appointed where it processes either category of personal data on a large scale, meaning that a larger number of organisations may now be required to appoint a DPO. In particular the potential impact of this requirement on entities such as insurance companies and insurance intermediaries will need to be carefully assessed.

Where it is determined that a DPO is not required, the rationale behind this decision should be recorded and kept on file.

A copy of the corrigendum is available [here](#) and for further information on the corrigendum, please refer to the following briefing issued by Dillon Eustace, available [here](#).

(xii) Data Protection Commission provides information update prior to GDPR coming into force

On 8 May 2018, the Irish Data Protection Commission (“**DPC**”) published a ‘GDPR – Information Update 8 May 2018’ (“**Update**”). The Update provided a brief summary of the changes the GDPR will bring in relation to:

- ▣ The requirement to register data processing activities with the DPC and to pay the applicable fee ceased on 25 May 2018;
- ▣ The obligation on the DPC to keep a public register of such processing activities also ceased; and
- ▣ The Update also provided information on when an organisation will be required to appoint a designated data protection officer (“**DDPO**”) and what such organisations will be required to do such as publishing the details about their DDPO.

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

(xiii) Irish Data Protection Commission gives guidance to data processors and controllers on obligatory contracts under GDPR

On 9 May 2018, the Irish Data Protection Commission published a ‘Practical Guide to Data Controller to Data Processor Contracts under the GDPR (the “**Guidance**”).

The Guidance is published to assist data controllers (“**Controllers**”) and data processors (“**Processors**”) to meet their obligation introduced by the GDPR to enter into legally binding contracts governing the processing of personal data when a Controller instructs a Processor is engaged in the processing of personal data on behalf of a Controller. The Guidance provides:

- ▣ The context of this obligation;
- ▣ The circumstances whereby Controllers and Processors will be obliged to enter into such contracts; and
- ▣ A list of the mandatory provisions which must be included in all such data processing contracts such as that the Processor ensures that any person(s) processing personal data is subject to a duty of confidentiality.

For further information please find the Guidance [here](#).

(xiv) Insurance Europe highlights primary obligations under GDPR for insurers

On 16 May 2018, Insurance Europe published the document “*GDPR is around the corner: time for final checks by insurers*”. The document is designed as an overview of the primary obligations to be imposed on insurers’ as data controllers under the General Data Protection Regulation (“**GDPR**”). Among the obligations of note to insurers according to the document are:

- ▣ Lawful processing;
- ▣ Keeping consumers informed;
- ▣ Responding to consumers exercising their rights;
- ▣ Providing additional safeguards for data processors;
- ▣ Appointing a data Protection Officer; and
- ▣ Protecting privacy by design and default.

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

(xv) Pensions Authority updates its Codes of Governance for Defined Contribution Schemes for GDPR

On 23 May 2018, the Pensions Authority published an updated version of their codes of governance for Defined Contribution (“**DC**”) Schemes (the “**Codes**”) which provide trustees with the standards they are expected to adopt to demonstrate their commitment to protecting the best interest of their members and beneficiaries.

Further to GDPR, which came into force on 25 May 2018, the Pensions Authority has deleted DC Code 8, which related to data protection and instead has issued a Guidance to assist trustees in preparing for GDPR.

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

(xvi) New rules on data protection for the European Union’s institutions agreed

On 23 May 2018, agreement on a new regulation on the handling of personal data by the European Union’s institutions and other bodies, offices and agencies (together the “**Agencies**”) was reached by representatives of the Council and Parliament to align with the GDPR entering force on 25 May 2018. Similar to the GDPR, the Regulation guarantees certain rights of data subjects, provides principles to be followed by the Agencies and enhances the role of data protection officers within each European Union institution and that of the European data protection supervisor.

Before the new rules become binding the text will first undergo linguistic revision and must then be formally adopted by the European Council and Parliament.

For further information please find a copy of the text of the new rules here, and a press release in relation to same [here](#).

(xvii) Irish Deputy Data Protection Commissioner lists organisations prone to inspection under GDPR

On 23 May 2018, the Data Protection Commission (“**DPC**”) published a press release outlining how it will be enforcing the GDPR. The DPC is responsible for monitoring the proper application of the GDPR by all organisations and businesses who have a presence in Ireland. In the press release the DPC outlines:

- ▣ The DPC will not operate a grace period after 25 May 2018 when assessing breaches as the GDPR provided for an implementation period of two years before 25 May 2018
- ▣ Measures that can be taken by organisations to minimise and mitigate against potential consequences and sanctions arising from breaches of the GDPR.
- ▣ The obligation of transparency ensuring that individuals can easily understand what, how and why their data is being processed will be the primary obligation the DPC ensures is complied with.

The DPC outlined that certain organisations will be more prone to close inspection by the DPC. These include organizations engaged in:

- ▣ Intensive online tracking and profiling;
- ▣ Online internet platforms (including online apps);
- ▣ Organisations which process special categories of data such as health or biometric data or other high-risk personal data such as financial and insurance data;
- ▣ Companies which use emerging technologies such as Artificial Intelligence and Internet of Things; or
- ▣ Companies which are intensively engaged in automated decision making and profiling of individuals.

For further information on how the DPC has strategised to tackle enforcing the GDPR in Ireland please find a copy of the full press release [here](#).

(xviii) Pensions Authority issues Information Note on GDPR for Trustees

On 24 May 2018, the Pensions Authority issued an information note entitled '*Considerations for Trustees of Occupational Pension Schemes*'. The note has been issued to help trustees prepare for GDPR and maintain ongoing compliance and provides information on the following topics:

- ▣ Introduction - Why Trustees ought to take heed of the GDPR and the basics of GDPR;
- ▣ Data governance and awareness;
- ▣ Legal basis for processing;
- ▣ Subject and Access requests;
- ▣ New rights for individuals;
- ▣ Data breaches and actions to be taken;
- ▣ Data protection officer requirements; and
- ▣ International data flows and requirements.

For further information please find a copy of the information note [here](#).

(xix) Data Protection Act 2018 signed into law by President Higgins

On 24 May 2018, the long awaited Data Protection Act 2018, sponsored by the Minister for Justice and Equality was enacted (the "**Act**"). The Act, comprising of 232 sections will overhaul the regulatory and enforcement framework and aims to give further effect to existing European legislation. In particular there are five primary aspects to this legislation:

- ▣ It repeals the Data Protection Act 1988, as amended, save provisions relating to the processing of personal data for national security, defence and international relations of the State;
- ▣ It transposes the Police and Criminal Justice Authorities Directive (2016/680) which regulates the processing of personal data by law enforcement authorities;
- ▣ It provides for the limited national derogations from obligations imposed in General Data Protection Regulation ("**GDPR**");
- ▣ It provides new enforcement powers and mechanisms for the Data Protection Commission; and

- ▣ It provides for the consequential amendments to sixty-five Acts of the Oireachtas while revoking other statutory instruments as a result GDPR and this Act.

The Act legislates for the derogations provided in the GDPR, which include:

- ▣ Creating the offence of processing personal data of a child under eighteen years of age for the purposes of direct marketing, profiling or micro-targeting;
- ▣ Creating a specific right to be forgotten to children;
- ▣ Assigning the Irish Data Protection Commissioner with the task of encouraging the development of codes of conduct to ensure children avail of their rights bestowed by GDPR;
- ▣ Enabling fines of up to one million euro to be imposed by public bodies and authorities where a breach occurs;
- ▣ Equipping the DPC with enhanced investigative and enforcement powers including the power to examine witnesses under oath, conduct oral hearings and strengthen their search and seizure powers;
- ▣ Restricting individual rights of legal privilege;
- ▣ Permitting the processing of health data for insurance and pension purposes and data relating to criminal convictions and offences in specific circumstances; and
- ▣ Establishing several criminal offences that may be tried by summary conviction or by a trial of indictment with the latter providing a sanction of up to €250,000 and/or five years imprisonment.

For further information a copy of Minister Flanagan's commencement order is available [here](#) and a copy of the Act is available [here](#).

(xx) Irish Commissioner for Data Protection welcomes GDPR

On 25 May 2018, Helen Dixon the Irish Commissioner for Data Protection released a statement welcoming the application of the GDPR.

Dixon's statement demonstrated, amongst other things, satisfaction at the awareness of the GPDR in Ireland, noting that a survey conducted in May 2018 showed that 90% of Irish small and medium enterprises were aware of the GDPR showing a two fold increase from the previous year.

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

(xxi) European Data Protection Board conducts first plenary meeting

On 25 May 2018, the European Data Protection Board (“**EDPB**”) – the successor of the Article 29 Working Party, held its first plenary meeting.

The EDPB is comprised of the heads of national supervisory authorities, the European Data Protection Supervisor (“**EDPS**”) and a representative of the European Commission. Its role will include safeguarding the consistent application of the GDPR across Europe but will also involve advising the European Commission on matters including the level of data protection available in third countries and will promote cooperation between national supervisory authorities.

The meeting involved electing the Chair and two Vice-Presidents, signing the Memorandum of Understanding (“**MoU**”) with the EDPS and adopting a statement on the ePrivacy Regulation. The MoU outlined how the EDPB and the EDPS will cooperate when carrying out their functions in light of the GDPR.

The EDPB also issued a statement on the ‘revision of the ePrivacy Regulation and its impact on the protection of individuals with regard to the privacy and confidentiality of their communications.’ The statement calls for the adoption of the new ePrivacy Regulation promptly and comments on the amendments to the ePrivacy Regulation proposed by co-legislators. Such comments included its support for the European Parliament’s strengthening of Article 10 requiring privacy by default in respect of software settings and to provide a technical solution for websites to obtain a valid consent. The EDPB however suggests that the Article should also explicitly apply to operating systems of smartphones, tablets, or any other ‘user agent’, in order to ensure that communication applications can take into account the choices of their users, no matter what technical means are involved.

For further information please find a copy of the press release [here](#), a copy of the MoU [here](#), and a copy of the statement on the ePrivacy Regulation [here](#).

(xxii) Draft Guidelines published for consultation regarding certification criteria under the GDPR by EDPB

On 25 May 2018, the EDPB adopted a draft version of the ‘Guidelines on certification and identifying certification criteria in accordance with Articles 42 and 43 of the GDPR’ (the “**Guidelines**”).

The Guidelines have been published for a public consultation with the EDPB welcoming input from all stakeholders before the deadline of 12 July 2018.

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

(xxiii) EDPB issues Guidelines on derogations under Article 49

On 25 May 2018, the EDPB adopted the final version of the ‘Guidelines on derogations applicable to international transfers’ (the “**Guidelines**”) under Article 49 of the GDPR. The Guidelines which had been subject to a public consultation have integrated some of the responses into the final version. The Guidelines provide amongst other things:

- ▣ Practical examples of the derogations under Article 49 of the GDPR and their use e.g. intra-group use;
- ▣ Guidance on the “occasional” and “necessity” test; and
- ▣ Specifies that derogations that are not strictly limited to “occasional” or “not repetitive” transfers must be interpreted restrictively.

For further information please find a copy of the Guidelines [here](#).

(xxiv) Irish Data Protection Commission publishes guidance on limiting data subject rights and the application of Article 23 GDPR

In May 2018, the Irish Data Protection Commission (the “**DPC**”) published guidelines as regards limiting data subject rights and the application of Article 23 of the GDPR.

The GDPR, as per Article 23, prescribes a mechanism to permit the restrictions of data subject rights, provided for in Articles 12 – 22 and Article 34 of the GDPR, in particular and specific circumstances.

Section 60 of the Data Protection Act 2018 gives further effect to Article 23 of the GDPR setting out a specific procedure in relation to bodies who wish to make regulations to restrict the rights afforded by the GDPR under Articles 12 – 22 and Article 34.

The DPC states that these guidelines are to be viewed as a support to those organisations that wish to draft regulations to restrict the application of the rights afforded under Articles 12 – 22 and Article 34 of the GDPR.

The guidelines are available [here](#).

(xxv) Data Protection Commission published list for public consultation of all organisations to be subject to mandatory Data Protection Impact Assessments

On 6 June 2018, the Data Protection Commission published a press release notifying parties that they have launched a public consultation on the draft list of processing operations for which a Data Protection Impact Assessment will be mandatory.

Responses must be submitted prior to the deadline of 4 July 2018.

A copy of the press release announcing the consultation is available [here](#) and a copy of the consultation paper is available [here](#).

(xxvi) Proposal for a Cybersecurity Act text is agreed within the European Council and is adopted by the Telecommunications Council

On 8 June 2018, the Telecommunications Council adopted a 'general approach on the Cybersecurity Act proposals'. The approved and adopted text was published by the Council of the European Union on 29 May 2018 entitled the 'General Approach' document "to the proposal for a 'Regulation on ENISA the "European Union Agency for Cybersecurity" and repealing Regulation 526/2013 and on Information and Communication Technology cybersecurity certification' (the "**Cybersecurity Act**").

The proposals for the Cybersecurity Act, originally published in September 2017 by the European Commission, consist of measures to address cyber-attacks and to develop stronger cybersecurity within the European Union. The Cybersecurity Act contains two major strands:

- ▣ The introduction of a permanent Agency, the 'European Agency for Cybersecurity' which will be a newer version of the 'European Agency for Network and Information Security ("**ENISA**") and new powers to enable it to provide effective and efficient support to Member States, European Union institutions and other stakeholders' efforts to enhance the cybersecurity in the European Union; and
- ▣ A European cybersecurity certification framework, which will among other things, verify that products and services in the digital world are cyber secure and address the current market fragmentation by allowing cybersecurity certificates issued under particular schemes to be recognised in all Member States.

The European Parliament will now need to consider the revised text of the Cybersecurity Act and is called on to do so before the end of 2018.

The text adopted by the Council is available [here](#) and the Statement [here](#).

(xxvii) European Union –United States Privacy Shield called to be suspended

On 12 June 2018, a press release from the European Parliament reported that a slim majority of the Members of the European Parliament's ("**MEPs**") Civil Liberties Committee ("**LIBE**") voted in favour of suspending the European Commission's Privacy Shield agreement with the United States unless they introduce more stringent data protection safeguards by 1 September 2018. The full house is expected to vote on the matter in July 2018. The vote is another consequence of the Facebook-Cambridge Analytica data breach which demonstrated the shortcomings of the Privacy Shield.

While the vote is not binding, it places pressure on the European Commission to take measures to ensure that the United States fully complies with the GDPR.

The press release further disclosed MEPs concern about the recent adoption of the 'Clarifying Lawful Overseas Use of Data Act' by the United States which will provide the United States with far reaching powers including providing access to United States foreign police to the personal data across borders. This has the potential to have severe implications for GDPR.

For further information please find a copy of the press release [here](#).

(xxviii) Ministers publish Data Sharing and Governance Bill 2018

On 12 June 2018, the 'Data Sharing and Governance Bill 2018' (the "**Bill**") was published, following approval by the Government. The Bill has the objective of:

- ▣ Regulating the sharing of information which includes personal data, between public bodies which occurs extensively at present;
- ▣ Regulating the management of information by public bodies;
- ▣ Establishing a base of registries;
- ▣ Collecting public service information;
- ▣ Establishing a data governance board; and
- ▣ Providing for related matters.

A copy of the Bill, as initiated on 12 June 2018, is available [here](#). As of 29 June 2018, the Bill is before Seanad Éireann, Third Stage at the first Additional List of Amendments which is available [here](#).

(xxix) European Parliament, Council and Commission reach political agreement on free flow of non-personal data

On 19 June 2018, the European Parliament, Council and Commission reached a political agreement on new rules that will allow data to be stored and processed everywhere in the EU without unjustified restrictions. The new rules will:

- ▣ Ensure the free flow of data across borders, by setting a framework for data storing and processing across the EU, prohibiting data localisation restrictions;
- ▣ Ensure public authorities will be able to access data for scrutiny and supervisory control wherever it is stored or processed in the EU; and
- ▣ Encourage creation of codes of conduct for cloud services to facilitate switching between cloud service providers under clear deadlines.

A press release announcing the agreement is available [here](#). An accompanying Q&A fact sheet is available [here](#).

(xxx) Council Decision adopted the amendment of Annex XI (Electronic communication, audiovisual services and information society) and Protocol 37 containing the list provided for in Article 101 to the EEA Agreement (General Data Protection Regulation)

On 22 June 2018, the Council of the European Union published the Council Decision (EU) 2018/893 of 18 June 2018 on the position to be adopted on behalf of the European Union within the EEA Joint Committee concerning the amendment of Annex XI (Electronic communication, audiovisual services and information society) and Protocol 37 containing the list provided for in Article 101 to the EEA Agreement (General Data Protection Regulation).

A copy of the Council Decision (EU) 2018/893 can be accessed [here](#).

(xxxii) European Banking Federation co-signs letter on EU cybersecurity certification proposal

On 25 June 2018, the European Banking Federation (“**EBF**”) published an open letter on the EU Cybersecurity certification framework proposal. The EBF co-signed the letter alongside seven other industry associations in key areas for jobs and economic development in Europe.

The letter was published in advance of the expected vote on the proposal on 10 July in the European Parliament’s Industry, Research and Energy (“**ITRE**”) committee. The open letter, in particular, highlights the following points:

- ▣ For it to remain a competitive advantage for industry, a voluntary approach to certification is key;
- ▣ Conformity assessment methods and requirements should be defined in the EU cybersecurity certification schemes and not in the regulation itself so as to allow for a fit-for-purpose approach according to risks and use cases; and
- ▣ The adoption of the EU cybersecurity certification schemes should include a process to ensure that they are aligned or could take part in existing international mutual recognition agreements to ensure that the EU certificates are globally recognised.

The open letter is available [here](#).

(xxxii) Update regarding use of Internal Market Information System for GDPR purposes

On 27 June 2018, the European Data Protection Board (“**EDPB**”) published an update on the use of the Internal Market Information System (“**IMI**”) for GDPR purposes.

Under the GDPR, the supervisory authorities of the Member States closely cooperate to ensure a consistent application of the GDPR throughout the European Union. The IMI was chosen as the IT platform to support cooperation and consistency procedures under the GDPR.

On 25 May, the first case was initiated in IMI, and shortly afterwards the supervisory authorities started to cooperate via the system. Currently, more than 30 cross-border cases are under investigation.

The update is available [here](#).

Insurance (Amendment) Bill 2018

(i) Insurance (Amendment) Bill 2018 published in Ireland

On 19 June 2018, the text of the Insurance (Amendment) Bill 2018 was published in Ireland (the “**Bill**”). The aim of the Bill is to repeal and replace certain provisions of the Insurance Act 1964, in order to:

- ▣ Clarify the role of the Insurance Compensation Fund;
- ▣ Implement the recommendations of the Review of the Framework for Motor Insurance Compensation in Ireland Report (2016); and
- ▣ Provide for the retrospective compensation of 100% of third party claims in respect of Setanta and Enterprise who are currently under liquidation.

The Bill, when enacted, will increase the level of insurance compensation fund coverage for all future third party motor claims from its current 65% level to 100%, in order to bring it into line with the compensation levels paid out by the Motor Insurer’s Bureau of Ireland.

As of 30 June 2018, the Bill is before Dáil Éireann, First Stage.

A copy of the Bill, as initiated, is available [here](#) and a copy of the Explanatory Memorandum is available [here](#).

Financial Services and Pensions Ombudsman

(i) **Financial Services and Pensions Ombudsman Act 2017 [Financial Services and Pensions Ombudsman Council] Financial Services Industry Levy Regulations 2018**

On 25 June 2018, the Financial Services and Pensions Ombudsman Act 2017 [Financial Services and Pensions Ombudsman Council] Financial Services Industry Levy Regulations 2018 [S.I. No. 214 of 2018] came into operation.

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

Office of the Director of Corporate Enforcement ("ODCE")

(i) **ODCE publishes Annual Report for 2017**

On 29 June 2018, the Office of the Director of Corporate Enforcement ("ODCE") published its Annual Report for 2017.

The report provides an overview of the ODCE's enforcement activities, including its use of administrative measures, insolvency-related enforcement measures, exercise of statutory investigative and enforcement powers and referrals to the Director of Public Prosecutions that are reflective of the ODCE's strategic shift towards seeking to confront indications of wrongdoing at the more serious end of the spectrum.

A copy of the Annual Report is available [here](#) and an accompanying press release is available [here](#).

Gender Pay Gap Information Bill

(i) **Ministers publish General Scheme of Gender Pay Gap Information Bill**

On 26 June 2018, the General Scheme of the Gender Pay Gap Information Bill was published. This significant Bill will provide that employers with a certain number of employees (which will be set at 50 or more after an initial period of operation for bigger firms) must publish information on the gender pay gap in their firm.

The General Scheme will now be published and submitted to the Joint Oireachtas Committee on Justice and Equality for pre-legislative scrutiny.

The text of the General Scheme is available [here](#).

Dillon Eustace
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