Insurance Quarterly Legal and Regulatory Update

Period covered

1 April 2016 – 30 June 2016

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INSURANCE QUARTERLY LEGAL AND REGULATORY UPDATE

Solvency II

(i) Delegated Regulation concerning the calculation of regulatory capital requirements for several categories of assets held by insurance and reinsurance undertakings

On 1 April 2016, Commission Delegated Regulation (EU) 2016/467 of 30 September 2015 amending Commission Delegated Regulation (EU) 2015/35 concerning the calculation of regulatory capital requirements for several categories of assets held by insurance and reinsurance undertakings (the **"Amending Regulation"**) was published in the Official Journal of the EU. The aim of the Amending Regulation is to remove specific regulatory impediments to financing long term investment projects by insurers by amending the treatment of infrastructure investments, European Long Term Investment Funds ("**ELTIFs**") and equities traded on multilateral trading facilities ("**MTFs**") under the Solvency II regime.

The revisions made include:

- A new concept of 'qualifying infrastructure investments': this type of investment presents better risk characteristics than other infrastructure investments and insurers will need to hold a lower level of capital against their investment in these infrastructure projects. 'Qualifying infrastructure investments' will form a distinct asset category under Solvency II and will benefit from an appropriate risk calibration;

- Allowing investments in ELTIFs to benefit from lower capital charges under Solvency II. This brings them in line with investments in European Venture Capital Funds and European Social Entrepreneurship Funds, which benefit from the same equity capital charge as equities traded on regulated markets;

- Extending the application of a transitional measure for equity investments to unlisted equities, so that insurers will not suddenly withdraw from equity investments; and

- Granting equities traded on MTFs the same capital charge as equities traded on regulated markets.

The Amending Regulation entered into force on 2 April 2016 and can be accessed via the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R0467

(ii) Central Bank publishes User Procedure Document for uploading Solvency II XBRL Files to the Online Reporting System

On 1 April 2016, the Central Bank published the Online Reporting System - Solvency II XBRL File Upload User Procedure Document Insurance to provide guidance on how to upload Solvency II XBRL files to the Central Bank's Online Reporting System. This user procedure document provides guidance on how to add a Solvency II Return instance to Test ONR for an institution, the file naming convention, the XBRL Instance file, the full list of Solvency II Return file names, validation failure and acceptance and how to view all uploaded files.

The Solvency II XBRL File Upload User Procedure Document can be accessed on the Central Bank website via the following link:

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/Documents/User%20Manual%20Solvency%20II%20XBRL.pdf

(iii) Update on amendments to Implementing Technical Standards on the templates for the submission of information to the supervisory authorities and to EIOPA Guidelines on Reporting and disclosure

On 5 April 2016, EIOPA published its Consultation Paper on the proposal for amendments to Implementing Technical Standards on the templates for the submission of information to the supervisory authorities and amendments to the EIOPA Guidelines on Reporting and disclosure (16/004) (the "**Consultation Paper**").

The Consultation Paper proposed amendments to Commission Implementing Regulation (EU) 2015/2450 taking into consideration the Amending Regulation referred to above (Commission Delegated Regulation (EU) 2016/467).

The proposed amendments focus on template S.06.02, S.26.01, CIC table and Regular Supervisor Report and aim to collect meaningful information for supervisory purposes while ensuring the smallest impact possible on the implementation efforts of industry and national competent authorities.

The Consultation Paper is also introducing corrective provisions to Commission Implementing Regulation (EU) 2015/2450 to correct minor drafting mistakes to avoid misinterpretation of the text.

The proposed amendments to the EIOPA Guidelines on Reporting and Disclosure involve the insertion of new Guideline 19a on qualifying infrastructure investments into the Regular Supervisory Reporting section of the guidelines.

Comments on the Consultation Paper were expected by 3 May 2016

On 2 June 2016, EIOPA published the final report on public consultation 16/004 on the proposal for amendments to Implementing Technical Standards on the templates for submission of information to the supervisory authorities (the "**Final Report**").

The Final Report sets out the feedback statement to the Consultation Paper and the full package of the public consultation and also the following:

- The amendment to the ITS laying down implementing technical standards with regards to the templates for the submission of information to the supervisory authorities according to the Solvency II Directive;
- The amendment to the Guidelines on Reporting and Disclosure;
- The Impact Assessment; and
- Resolution of comments.

The Draft ITS were submitted to the Commission for endorsement on 1 June 2016. The Commission has 3 months to endorse or partially endorse the Draft ITS. This period may be extended by 1 month.

To ensure timely reporting with reference date of 31 December 2016, EIOPA will issue the adapted XBRL taxonomy (version 2.1.0) in July 2016. The Public Working Draft (2.1.0 PWD) of this taxonomy was published on 1 June 2016 for testing and review by market participants.

The Final Report can be accessed via the following link:

https://eiopa.europa.eu/Pages/News/EIOPA-proposes-amendments-for-the-supervisory-reporting-templates-under-Solvency-II.aspx

(iv) Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Insurance Undertakings National Specific Templates Reporting Arrangements) Regulations 2016

On 11 April 2016, the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Insurance Undertakings National Specific Templates Reporting Arrangements) Regulations 2016 (S.I. 159/2016) (the "**Regulations**") commenced. The Regulations apply to:

- All life and non-life insurance undertakings authorised under the European Union (Insurance and Reinsurance) Regulations 2015 and which are rated as High impact under the PRISM supervisory regime;

- Insurance undertakings transacting business in Ireland on a branch basis and whose Irish Risk annual gross written premium exceeds €25,000,000. (The Regulations commence on 1 January 2017 for these undertakings)

- Insurance and reinsurance undertakings which transact Variable Annuity Business regardless of PRISM impact rating.

These Regulations set out the general reporting requirements in respect of National Specific Templates and the reports required for each of the following:

- Non-life undertakings;

- Life undertakings;

- Undertakings transacting variable annuity business;

- Undertakings transacting non-life business in Ireland on a branch basis; and

- Undertakings transacting life business in Ireland on a branch basis.

The Regulations are available at the following link:

https://www.centralbank.ie/regulation/industry-sectors/insurance-companies/Documents/SI%20159%20of%202016%20-%20NST%20Regulations.pdf

(v) Update on EIOPA technical advice on the identification and calibration of infrastructure corporates under Solvency II

Further to a request by the European Commission in October 2015, EIOPA issued a consultation paper on 15 April 2016 setting out further technical advice on the identification and calibration of other infrastructure investment risk categories i.e. infrastructure corporates (the "**Consultation Paper**").

The Consultation Paper contained the analysis performed by EIOPA in respect of infrastructure corporates and the draft findings and proposals. The consultation period ended on 16 May 2016**.**

On 30 June 2016, EIOPA published its Final Report on the Consultation Paper (the "**Final Report**"). The Final Report contains EIOPA's final advice, summaries of the main

feedback provided by stakeholders to the April 2016 consultation, the outcome of further analysis conducted by EIOPA, and the conclusions reached by EIOPA in respect of the consultation topics.

EIOPA recommends that the report should be read in conjunction with the Consultation Paper as it provides more detail on the rationale for some parts of the advice.

Some of the main recommendations and final advices contained in the Final Report include the following:

- EIOPA recommends an equity risk charge of 36% for well diversified portfolios of infrastructure equity investments in infrastructure corporates that meet the specified requirements.
- EIOPA recommends some revisions to the qualifying criteria for infrastructure projects to allow "project like" corporates to qualify for the risk charges of infrastructure projects according to the Solvency II Delegated Regulation (2015/35/EU);
- EIOPA recommends new criteria to identify a class of qualifying infrastructure corporate equities; and
- EIOPA recommends carrying out adequate due diligence prior to making a qualifying infrastructure investment and sets out the specific requirements for investments in qualifying infrastructure projects.

The Final Report indicated that the advice would be submitted to the Commission by the end of June 2016.

The Final Report is available via the following link:

https://eiopa.europa.eu/Publications/Consultations/EIOPA-16-490_Final-Report_advice_infrastructure_corporates.pdf

(vi) Solvency II Information Note 9 – Look-through of collective investment undertakings template S.06.03

On 15 April 2016, the Central Bank published the Solvency II Information Note 9 on the Look-through of Collective Investment Undertakings ("**CIUs**") template S.06.03 (the "**Information Note**") which sets out the Central Bank's position regarding the completion of the template where an undertaking is experiencing difficulty in providing the detail required by the template.

The Information Note was published in response to a question in EIOPA's Q&A document relating to template S.06.03 where EIOPA answers that all CIUs have to be subject to a

look-through but that specific situations might be discussed with the "National Supervisory Authorities".

The Central Bank's position is that all undertakings should make every effort to provide a full look-through of their CIUs when completing template S.06.03. However, where it can be demonstrated that the undertaking has made every effort but their completion of the template would not meet the expectations set out in the ITS, then for Quarter 1, 2016 reporting:

- Undertakings should complete the template using the best available data;
- Submit a narrative which contains details of the problems they have experienced and the proportion of investments affected by these problems; and
- The approach they have taken to completing the template for Quarter 1.

Undertakings must also submit a proposal outlining how they plan to address the problems being experienced in such a way as to ensure that the undertaking is fully compliant with the relevant Solvency II requirements including those relating to the Prudent Person principle and supervisory reporting from Quarter 2, 2016.

Where no such submission is made by the undertaking, the Central Bank will work on the basis that the undertaking has assessed that it has provided a fully compliant look-through of all CIUs within the Quarter 1 template.

The Central Bank notes in the Information Note that it does not intend to provide guidance on what constitutes CIUs or on the meaning of materiality in the context of disclosing CIUs within CIUs.

The Information Note can be accessed via the following link:

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/Documents/Solvency 20II Information Note 9–Look-through of Collective Investment Undertakings in template S.06.03.pdf

(vii) Central Bank publishes 'Day One' Opening Balance Sheet Reconciliation Reporting template: Frequently Asked Questions ("FAQs")

On 16 April 2016, the Central Bank published the 'Day One' Opening Balance Sheet Reconciliation Reporting template FAQs. In addition to the previous letters and correspondence issued by the Central Bank, this FAQs document provides further information for life and non-life (re)insurance firms on the 'Day One' Opening Balance Sheet Reconciliation Reporting template . The FAQs document covers queries received

directly from firms and includes the points that were covered in its correspondence dated 16 March 2016. The Central Bank will update the document on an ad-hoc basis to provide clarification on further queries raised by firms.

The FAQs document is structured into sections comprising General, Non-life insurance, Life insurance, Reinsurance and Group sections.

The Central Bank notes that the FAQs document does not constitute legal advice and should be read in conjunction with the relevant legislation that applies in respect of this 'Day One' Reporting requirement as outlined in Article 314 of the Commission Delegated Regulation 2015/35/EU.

The FAQs document can be found at the following link:

https://www.centralbank.ie/regulation/industry-sectors/insurance-companies/Documents/FAQ for Quantitative Opening Balance SheetReconciliation.pdf

(viii) EIOPA consults on methodology to derive ultimate forward rate ("UFR") under Solvency II

On 20 April 2016, EIOPA published the Consultation Paper on the methodology to derive the UFR and its implementation (the **"Consultation Paper"**).

The Consultation Paper seeks feedback on the methodology to derive the UFR referred to in Article 77a of the Solvency II Directive. It is part of EIOPA's review of the UFR methodology which started in May 2015.

The Consultation Paper sets out the reasons for reviewing the UFR methodology. To achieve the objective of policyholder protection under Solvency II the UFR needs to be chosen appropriately. The Solvency II Delegated Regulation provides that the UFR must be determined in a transparent, prudent, reliable, objective manner that is consistent over time.

The Consultation Paper notes that the current UFRs were initially derived in 2010 for the purpose of the fifth Quantitative Impact Study for Solvency II (**"QIS5"**). The description of the derivation of the UFRs was included in a background paper on QIS5 and EIOPA notes that this description does not constitute a specified methodology as it is not fully clear how the derivation approach will be applied on an ongoing basis. Furthermore, the current UFRs were determined before the derivation was specified in the Solvency II Delegated Regulation and the review should align with the methodology to the legal provisions where necessary. EIOPA is aware of stakeholders' concern that the current UFRs are too high while other stakeholders seem to favour keeping the UFR constant in the foreseeable

future. However, where the expectations on long-term interest rates change, this approach is not in line with the description of the UFR in the Delegated Regulation.

The Consultation Paper includes a proposal for:

- The UFR methodology and its implementation;
- A reasoned explanation of the proposal;
- An analysis of the impact of changing the UFR on the risk-free interest rates, the time value of money and on the present value of insurance cash-flows.

EIOPA welcomes comments on the Consultation Paper by 18 July 2016 and the outcome of the review will be decided in September 2016. The current
UFRs will not be changed until at least the end of 2016.

The Consultation Paper and the template for comments can be accessed via the following link:

https://eiopa.europa.eu/Publications/Consultations/RFR%20CP%20on%20methodology%20to%20derive%20the%20UFR%20(after%20BoS).pdf

https://eiopa.europa.eu/Publications/Consultations/Template-for-Comments-on-CP-16-003.doc

(ix) EIOPA publishes final report on the development of an EU single market for personal pension products

On 27 April 2016, EIOPA published the Final Report on Public Consultation (CP-15/006) on the creation of a standardised Pan-European Personal Pension product (**"PEPP"**) (the "**Final Report**").

This Final Report provides:

- A summary of Stakeholder feedback received during the Public Consultation between July and October 2015; and
- How EIOPA addressed the feedback in its final advice on PEPP of February 2016, after having analysed and weighed this feedback.

An analysis of the feedback received during the consultation confirmed EIOPA's views that a standardised PEPP with a defined set of regulated, standardised elements, including some flexible ones, would be best placed to support sustainable pensions via personal

pension savings. The PEPP should be safe, cost-effective, transparent and sufficiently flexible to accommodate the current economic and labour market environment in Europe and be complementary to the 1st and 2nd pillar pensions systems in Member States. EIOPA supports strengthening all 3 pension pillars that support Europeans in providing for an adequate retirement income.

The Final Report can be accessed via the following link:

https://eiopa.europa.eu/Publications/Reports/EIOPA-16-341-Final-Report-PEPP-fin.pdf

On 27 April 2016, Insurance Europe issued a position paper on the Pan-European Personal Pension Products (the **"Position Paper"**) which comments on EIOPA's Final Report.

In this Position Paper, Insurance Europe welcomes the discussion around PEPPs as a means to potentially increase the volume of private pensions sold and better allocate funds towards long-term investments. However, the Position Paper notes certain EU insurer's reservations over the PEPP design and that EIOPA's proposal does not give proper consideration to key product features that to date have proven instrumental in providing EU citizens with tailored retirement solutions.

The Position Paper can be accessed via the following link:

http://www.insuranceeurope.eu/concerns-raised-eiopa-pepp-proposal-european-commission

(x) EIOPA publishes updated Solvency II Q&A documents

During Quarter 2, 2016, EIOPA published Q&A's on the following:

- Risk-free interest rate – Extrapolation (Published 1 April 2016);
- Guidelines on submission of information to NCAs (Preparatory phase) (Published 1 April 2016);
- Guidelines on group solvency (Published 27 April 2016);
- Guidelines on recognition and valuation of assets and liabilities other than technical provisions (Published 20 May 2016);
- Guidelines on the treatment of market and counterparty risk exposures in the standard formula (Published 20 May 2016);

- Final report on the ITS on procedures, formats and templates of the solvency and financial condition report (CP-14-055)(Published 6 June 2016).

The EIOPA Q&A's can be accessed via the following link:

https://eiopa.europa.eu/regulation-supervision/q-a-on-regulation

(xi) Central Bank publishes Statistics National Specific Template 13 (NST.13) - Notes on Compilation

On 3 May 2016, the Central Bank published the updated Notes on Compilation for Statistics National Specific Template 13 (NST.13) (the "**NST.13 Notes**"). In order to meet the requirements of the ECB Securities Holdings Statistics Regulation (ECB/2012/24), the Central Bank is collecting the NST.13 data to reconcile differences in the reporting of Statistical and Supervisory data by giving a head office/non-resident branch split.

The NST.13 Notes include the following:

- An Introduction to the NST.13 template which provides details on valuation, reporting currency, the basis of reporting, the reporting frequency, the basis of collection, Solvency II QRT Data and NST.13 and Reporting Population;
- Some clarification on queries raised since the NST.13 Notes were first published;
- Definitions of entry fields; and
- A worked example for (re)insurance undertakings which shows how the data in the SE.06.02 and NST.13 templates are related and goes on to show how to compile and split the data to meet the requirements of NST.13 template.

The updated NST.13 Notes can be accessed via the following link:

http://www.centralbank.ie/polstats/stats/reporting/InsuranceCorporations/Documents/NST.13 Notes on Compilation.pdf

(xii) Central Bank publishes SNST.1 – Quarterly Aggregate Balance Sheet Statement for Irish Resident Branches and accompanying documents

On 3 May 2016, the Central Bank published the latest version of the SNST.1 Irish Resident Branches Quarterly Aggregate Balance Sheet Statement which should be completed by any Irish resident branch of an Insurance Corporation headquartered in another EEA country.

In April, the Validations Document was published and sets out the validation rules that apply when uploading the SNST.1 return to the Central Bank's Online Reporting ("**ONR**") system. In May 2016, the accompanying Notes on Compilation (including a worked example) for SNST.1 were published.

The SNST.1 template and the accompanying documents can be found at the following link:

http://www.centralbank.ie/polstats/stats/reporting/InsuranceCorporations/Pages/default.aspx

(xiii) Central Bank issues letter to industry on Solvency II Reporting

Prior to the various initial reporting deadlines in May 2016, the Central Bank issued a letter on 6 May 2016 to undertakings in respect of the submission of the initial Solvency II reporting templates to highlight a number of matters identified. These matters included the following:

Test System: The Central Bank strongly urged undertakings to make use of the test system for the required Solvency II XBRL submissions as the testing experience indicated that multiple attempts were required to successfully complete a return upload. The Central Bank urged those undertakings which had not availed of the test system to do so and noted that the test system would remain open ahead of the initial submission date in May 2016.

ONR updated to accept Solvency II quantitative reporting: The Central Bank noted that on 26 April 2016 the Online Reporting System (the "**ONR**") collection system was updated to accept the Solvency II quantitative reporting for opening information and quarterly returns. Undertakings were free to begin submitting these returns subject to all required internal governance requirements being met. The Central Bank noted that they would also be accepting quarterly National Specific Templates through the ONR at this time.

Data Quality: The Central Bank highlighted the importance of data quality in the completion of the quantitative reporting under Solvency II. A taxonomically valid file will be accepted by the ONR but undertakings must note that successful completion of taxonomy checks represents the minimum required standard for the quality of data within the submitted returns and the Central Bank will be performing additional data quality and data plausibility checks on the returns post-submission.

Submission in advance of deadline: The Central Bank encourages undertakings to submit returns in advance of the deadline as they anticipate that the last few days in the run up to each deadline will be particularly busy and undertakings should allow sufficient

time to allow for cases where a taxonomy failure is recorded and a resubmission is required.

The letter outlines a number of relevant contact details and can be accessed via the following link:

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/Documents/SII Reporting Letter- 6 May 2016.pdf

(xiv) Central Bank issues letter to industry regarding review of the 2015 Forward Looking Assessment of Own Risks ("FLAOR")

On 9 May 2016 the Central Bank issued a letter to undertakings regarding the review of the 2015 FLAORs (the "**2015 FLAOR Review Letter**"). Given that Solvency II has taken effect, the Central Bank notes that the FLAOR now migrates to the ORSA. The Central Bank noted on its website that certain undertakings were not sent this correspondence. Instead they have received or will receive bespoke feedback on their 2015 FLAOR submissions.

In the 2015 FLOAR Review Letter, the Central Bank notes that, overall, the quality of the FLAORs submitted has improved. However there are a number of recurring themes and the letter sets out the main points from the review of the 2015 FLAOR which include:

Assessment of Overall Solvency Needs ("OSN"): A number of undertakings reported that their OSN was a simple buffer on top of the regulatory capital requirement without specifically referencing the material risks identified in their FLAOR when determining the rationale behind their OSN and the Central Bank noted that these undertakings should further develop the process of assessing their OSN in line with the EIOPA Guidelines on the ORSA (Guideline 7) (Guideline 11 of the Central Bank's Guidelines on the Solvency II – FLAOR)

Continuous compliance with regulatory capital requirements: The Central Bank noted that in a number of cases, there was not sufficient consideration of potential future material changes in the risk profile and the resultant impact on capital or own funds. Further work is also necessary as undertakings become familiar with the different tiers of capital under Solvency II, the limits of those tiers and the interaction between those limits through the business planning period. The Central Bank refers to the requirements of the EIOPA Guidelines on the ORSA (Guideline 10) (Guideline 13 of the Central Bank's Guidelines on the Solvency II – FLAOR)

Size, Structure and Content of Report: The Central Bank observed that there was a large variation in the size, structure and contents of the FLAOR reports. Minimum documentation requirements for the FLAOR/ORSA process are set out in Guideline 3 of

the EIOPA Guidelines on the ORSA (The Central Bank's "Guidelines on preparing for Solvency II - FLAOR" (Guideline 5)). In some cases, undertakings combined a number of the different documents into the supervisory report on the FLAOR which was submitted to the Central Bank. More concise and focussed reports should be prepared. In order to produce more focussed reports, the Central Bank recommends consideration of the following points:

- The report should provide an oversight into each undertaking's unique risk management framework and risk culture, reflecting the material risks of an undertaking in a practical and usable manner.

- The report should provide an oversight into how each undertaking takes into account the insights gained during the FLAOR/ORSA process in its business planning, capital management and product development and design in accordance with the Central Bank's "Guidelines on preparing for Solvency II - FLAOR" (Guideline 16) and the EIOPA Guidelines on the ORSA (Guideline 13).

Timing: The Central Bank observed cases where the time between the date of the data and the consideration of the Board report exceeded six months. This timeline could make the data less relevant and therefore less useful in decision making. It is expected that this time scale will shorten as the ORSA process gets embedded in undertakings.

A copy of this 2015 FLAOR Review Letter can be accessed via the following link:

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/Documents/Dear CEO-Review of 2015 FLAOR -9 May 2016.pdf

(xv) Central Bank publishes Consultation Paper 103 on Guidance for (Re)Insurance undertakings on the Head of Actuarial Function Role

On 20 May 2016, the Central Bank published Consultation Paper 103 on Guidance for (Re)Insurance undertakings on the Head of Actuarial Function Role (the "**Consultation Paper**").

Regulation 50 of the European Union (Insurance and Reinsurance) Regulations 2015 requires (re)insurance undertakings to establish and maintain an effective actuarial function to carry out certain tasks. These tasks are expanded upon in the Solvency II Delegated Regulation 2015/35.

The Guidance contained in the Consultation Paper aims to assist (re)insurance undertakings by providing an overview of issues that could be considered when completing certain tasks outlined for the actuarial function.

The Guidance deals with the following actuarial tasks:

- Opinion on underwriting policy;
- Opinion on reinsurance arrangements; and
- Contribution to the Risk Management System to include the calculation of capital requirements and the opinion on the ORSA process.

Due to the nature, scale and complexity of the (re)insurance undertaking, not all aspects of the Guidance will be relevant to each undertaking. In addition, (re)insurance undertakings may decide to adopt different practices to those covered in this Guidance in order to comply with the Solvency II Regulations and the Central Bank's requirements set out in the Domestic Actuarial Regime and Related Governance requirements. Where this arises, the undertaking is expected to be in a position to explain to the Central Bank (upon its request) the reason for adopting a different approach.

The Central Bank notes that the Guidance does not intend to cover every aspect of the tasks performed by the Head of Actuarial Function, however it will be updated periodically as approaches to certain issues develop over time.

The Central Bank invites submissions from interested stakeholders in the (re)insurance industry and can be sent by email to insurancepolicy@centralbank.ie or in writing to:

Consultation Paper 103
Prudential Policy and Governance Division – Insurance
Central Bank of Ireland
PO Box 559
Dame Street
Dublin 2

The closing date for submissions will be 12 August 2016 and the Central Bank will make submissions available on its website.

CP 103 can be accessed via the following link:

http://www.centralbank.ie/regulation/poldocs/consultation-papers/Pages/default.aspx

(xvi) Central Bank publishes Consultation Paper on External Audit of Solvency II Regulatory Returns/Public Disclosures

On 1 June 2016, the Central Bank published its Consultation Paper (CP 104) on the External Audit of Solvency II Regulatory Returns/Public Disclosures which sets out the

Central Bank's proposal regarding the external audit of elements of Solvency II regulatory returns/public disclosures (the "**Consultation Paper**").

Under Solvency II insurance and reinsurance undertakings are required to prepare a Solvency and Financial Condition Report ("**SFCR**") on an annual basis. The SFCR will consist of quantitative information and qualitative information. The SFCR will be publicly disclosed.

Regulation 37 of the Solvency II Regulations enables the Central Bank to require that elements of the quantitative information submitted by the insurance and reinsurance undertakings be audited, and that the audit report should include a reasonable assurance opinion on the elements of the SFCR relevant to the balance sheet, own funds and capital requirements.

The proposals apply to all (re)insurance undertakings regulated by the Central Bank falling within the scope of Solvency II. This is a new requirement for reinsurance undertakings as under the pre-Solvency II regime, reinsurance regulatory returns were not subject to review by auditors. Some of the proposals will also apply to Solvency II groups where the Central Bank is the Group Supervisor. For undertakings using approved full internal models, the Central Bank proposes excluding the capital requirements templates from scope. For undertakings that are using partial internal models, it is proposed that the elements of the SCR template calculated using the standard formula modules will be in scope.

Some of the proposals contained in the Consultation Paper include the following:

- The auditors will be required to produce a report which shall be made available to the Central Bank. This report should include a reasonable assurance opinion on the elements of the SFCR relevant to the balance sheet, own funds and capital requirements. The auditor's report will not be publicly available;

- It is expected that the auditors will perform certain audit procedures in respect of the opening balances in order to support their reasonable assurance opinion on the relevant elements of the SFCR. A separate audit opinion on the opening balances is not required;

- It is the intention of the Central Bank that the incumbent auditor would undertake the audit of Solvency II regulatory returns / public disclosures engagement;

- As part of the audit, auditors shall determine whether they should use the work of an auditor's expert such as an actuarial expert;

- Appendix 2 and 3 of the Consultation Paper set out the proposed Quantitative Reporting Templates in scope for solo entities and groups respectively;

- It is expected that the auditors will review relevant qualitative elements of the SFCR;

- The external auditor must assess whether the information disclosed in the undertaking's SFCR which is outside the scope of the audit engagement is consistent with the relevant elements of the SFCR and any other information to which the auditor has access;

- It is proposed that the external audit requirements would be required on an annual basis; and

- The audit report shall be submitted in line with the deadlines for reporting to the Central Bank under Solvency II.

The Central Bank proposes to impose the external audit requirements for financial years ending on or after 31 December 2016.

The Central Bank invites comments on the Consultation Paper by email to CP104@centralbank.ie no later than 29 July 2016.

The Central Bank is aiming to determine the final policy position by end September 2016.

The Consultation Paper can be accessed via the following link:

https://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP104%20External%20Audit%20of%20Solvency%20II%20Regulatory%20Returns,%20Public%20Disclosures/CP104%20External%20Audit%20of%20Solvency%20II%20Regulatory%20Returns.pdf

(xvii) Solvency II Commission Implementing Regulation (EU) 2016/869 published in the Official Journal of the EU

On 3 June 2016, Commission Implementing Regulation (EU) 2016/869 of 27 May 2016 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 31 March until 29 June 2016 in accordance with the Solvency II Directive (2009/138/EC) (the "**Implementing Regulation**") was published in the Official Journal of the EU.

For prudential reasons, it is necessary for (re)insurance companies to use the same technical information for the calculation of technical provisions and basic own funds for reporting irrespective of the date on which they report to their competent authorities and

this Implementing Regulation provides that (re)insurance companies must use the technical information on relevant risk-free interest rate term structures, fundamental spreads for the calculation of the matching adjustment and volatility adjustments referred to in Article 1 (2) when calculating technical provisions and basic own funds for reporting with reference dates from 31 March until 29 June 2016.

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

The Implementing Regulation which entered into force on 4 June 2016 applies from 31 March 2016 and is binding in its entirety and directly applicable in all Member States.

This Implementing Regulation can be accessed via the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2016:147:TOC

(xviii) 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 of the equity capital charge shall be included in the calculation of the equity risk sub-module in the Market Risk of Solvency Capital Requirements standard formula to cover the risk arising from changes in the level of equity prices. This adjustment is regulated mainly in Article 106 of the Solvency II Directive (2009/138/EC); Article 172 of the Solvency II Delegated Act (2015/35/EU) as well as in the Implementing Technical Standards on the equity index for the symmetric adjustment of the equity capital charge (Commission Implementing Regulation 2015/2016/EU).

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

- With reference to the end of March 2016 on 7 April 2016;
- With reference to the end of April on 11 May 2016; and
- With reference to end of May on 7 June 2016.

The monthly symmetric adjustment of the equity capital charge can be accessed via the following link:

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

European Insurance and Occupational Pension Authority ("EIOPA")

(i) EIOPA feedback statement on its opinion on internet sales of insurance and pension products

On 4 April 2016, EIOPA published a feedback statement on its opinion on sales via the internet of insurance and pension products (the "Feedback Statement"). The opinion to which the Feedback Statement relates was published on 28 January 2015. The Feedback Statement discusses feedback received from National Competent Authorities ("**NCAs**") on their approach to supervising online distribution activities. Some jurisdictions have taken some pre-emptive measures in this area. However, most jurisdictions have structured their supervisory measures to apply to all distribution channels, rather than specifically targeting online sales of insurance and pension products. The Feedback Statement also gives specific examples of actions taken by NCAs dealing with issues concerning online sales and notes that the vast majority of NCAs are seeking to be vigilant regarding the sale of insurance products over the internet and are focused on emerging risks to consumer protection as digital channels develop.

A copy of the Feedback Statement can be found here:

https://eiopa.europa.eu/Publications/Reports/EIOPA_BoS_WP_Feedback_Statement%28final%29.pdf

A copy of EIOPA's Opinion on sales via the Internet of insurance and pension products published on 28 January 2015 can be found here:

https://eiopa.europa.eu/Publications/Opinions/Opinion_on_sale_%20via_the_internet%28published%29.pdf

(ii) EIOPA publishes Final Report on the Peer Review on the Freedom to Provide Services

On 13 May 2016, EIOPA published its Final Report on the Peer Review on the Freedom to Provide Services.

Providing insurance on a freedom of services basis is fundamental to achieving an integrated market in Europe. Therefore, cooperation between the home and host

competent authorities is crucial to avoid the creation of barriers while at the same time protecting the interests of the policyholders.

The Peer Review was carried out by the EIOPA Review Panel between 1 January 2011 and 31 December 2013 and involved a self-assessment questionnaires being sent to NCAs in all 31 EEA States. Following the results of the initial analysis of the self-assessment questionnaires, the EIOPA Review Panel conducted field work in the form of visits, teleconferences and written procedures.

This final report outlined the key conclusions from the Review Panel's assessment of NCA's practices as well as the best practices identified and the recommended actions issued to NCAs and EIOPA. The peer review demonstrated the need to improve the current cooperation between NCAs at different stages of the supervisory process. In addition, an approach which is more focused on the consumer protection aspects in the host state is needed.

The Final Report outlines recommendations to EIOPA in the following areas:

- Data storage and record keeping;
- Exchange of information between NCAs at the point of authorisation of undertakings;
- Home supervisory approach regarding the undertakings' activity by freedom of services;
- Cooperation regarding the freedom of services activity within the college meetings;
- Exchange of statistical information between home and host NCAs; and
- Complaints handling.

The Final Report notes that very few best practices emerged from the Peer Review. The EIOPA Review Panel recommended conducting a follow up to this Peer Review in due course.

The Final Report can be accessed via the following link:

https://eiopa.europa.eu/Publications/Reports/EIOPA_Peer_Review_FPS_Final_Report_Publication_Outcomes_20160429_cl.pdf

(iii) EIOPA launches the EU-wide Insurance Stress Test 2016

On 24 May 2016, EIOPA launched an EU-wide stress test for the European insurance sector. The aim of the exercise is to assess European insurers' vulnerabilities by assessing the resilience of the European Insurance sector to severe adverse market developments based on a common analytical framework. It focuses on two major market risks; namely prolonged low yield environment and a "double-hit" scenario. The participation target in the exercise increased to a 75% share (from 50% in 2014) of each national market in order to include a higher number of small and medium size insurers.

EIOPA plans to publish Questions and Answers on a weekly basis in order to address queries of participating companies.

The deadline for submission of the results to the NCAs will be 15 July 2016. EIOPA expects to disclose the results of the EU-wide stress test in December 2016.

More information on EIOPA's Stress Test for the European Insurance Sector, including the Questions and Answers documents can be accessed via the following link:

https://eiopa.europa.eu/Pages/Financial-stability-and-crisis-prevention/Stress-test-2016.aspx

(iv) EIOPA and the China Insurance Regulatory Commission sign a Memorandum of Understanding

On 15 June 2016, EIOPA and the China Insurance Regulatory Commission ("**CIRC**") signed a Memorandum of Understanding (the "**MoU**") with the aim of building a practical framework for exchange of supervisory information and to increase mutual understanding of insurance supervisory regimes in Europe and China.

The MoU is the basis for the cooperation between EIOPA and CIRC to achieve the following three objectives:

- To build a practical framework for exchange of supervisory information;
- To update each other on the developments in the regulatory and supervisory frameworks for insurance and private pensions; and
- To increase mutual understanding on the Chinese (C-ROSS) and European (Solvency II) supervisory regimes for insurance.

To achieve these objectives under the MoU, EIOPA and CIRC will set up joint annual work programmes, experts' task forces and pursue other joint activities.

EIOPA and CIRC emphasise in the joint press release that the MoU is not the legal basis for the exchange of confidential information and does not create legal obligations on its parties as well as the European Union and its Member States.

The joint press release on the MoU can be accessed via the following link:

https://eiopa.europa.eu/Publications/Press%20Releases/2016-06-15%20MoU%20between%20EIOPA-CIRC.pdf

(v) EIOPA publishes its Annual Report 2015

On 15 June 2016, EIOPA published its Annual Report 2015. The EIOPA press statement notes that 2015 was a historical year for EIOPA as it completed the regulatory phase of the Solvency II regime which entered into force on 1 January 2016.

The Annual Report 2015 provides a detailed overview of the tools and projects that EIOPA used to achieve its goals:

- Strengthen consumer protection;
- Deliver quality and timely regulation;
- Ensure convergence, consistency and quality of supervision;
- Support financial stability; and
- Develop as a modern and competent authority.

The Annual Report 2015 also provides information on EIOPA's management of the resources allocated to it in order to meet these goals. The top 5 achievements for EIOPA in 2015 were:

- Finalisation of the Insurance Single Rulebook: production of the 2nd set of Solvency Implementing Technical Standards and Guidelines;
- Conduct supervision: Establishment of the new strategic approach for a comprehensive risk-based and preventative framework for conduct of business supervision and the first thematic review on mobile phone insurance.
- Implementation of the process and methodology for the monthly release of the Risk Free Rate required under Solvency II.

- Pan-European personal pension product ("**PEPP**"): Issue of consultation paper for the requirements setting out the creation of a PEPP.

- Balance sheet review and stress test of Romania's insurance sector.

The Annual Report 2015 can be viewed in full via the following link:

https://eiopa.europa.eu/Publications/Reports/EIOPA_ANNUAL_REPORT_2015.pdf

(vi) EIOPA publishes updates on major risks to financial stability

On 21 June 2016, EIOPA published its June 2016 Report on its website which reports on financial stability in the (re)insurance and occupational pension fund sectors of the European Economic Area.

In the report, EIOPA observes an ongoing extremely challenging macro-economic and financial environment. EIOPA indicates that the "double-hit" scenario cannot be ruled out given that monetary policy and low crude oil prices imply a protracted low yield environment in the short to medium term. Both low yields and the double hit risks are the focus of EIOPAs Insurance Stress Test 2016.

In the insurance sector, EIOPA reports on higher growth for non-life insurance companies than for life insurers, and in the reinsurance market the oversupply of capacity continues due to the alternative capital inflow and absence of large losses. With the Solvency II regime in effect since 1 January 2016, EIOPA has an important role in monitoring and ensuring the consistent and convergent application of the Solvency II framework. The current report includes a special article on the impact of mergers and acquisitions on the European insurance sector based on data on equity prices.

In the occupational pensions sector in certain countries, EIOPA reports that the funding ratio of the Institutions for Occupational Retirement Provision ("**IORPs**") has dropped due to low interest rates.

The EIOPA report also includes a thematic article on the impact of mergers and acquisitions on the European insurance sector based on data on equity prices.

A copy of the June 2016 Report in full can be found here:

https://eiopa.europa.eu/Pages/Financial-stability-and-crisis-prevention/Financial-Stability-Report-June-2016.aspx

European Commission

(i) Joint statement on US-EU negotiations on insurance and reinsurance measures

On 27 May 2016, the European Commission published a joint statement on US-EU negotiations for a bilateral agreement relating to prudential insurance and reinsurance measures. The statement notes that both sides will continue in good faith to pursue agreement on matters including group supervision and exchange of confidential information between US and EU supervisors. The statement also confirms their commitment to the pursuit of an agreement that will improve supervisory and regulatory treatment for insurance and reinsurance companies on both sides of the Atlantic.

The full Joint Statement can be viewed at the following link:

http://ec.europa.eu/finance/insurance/docs/solvency/international/160527-us-eu-joint-statement_en.pdf

(ii) Communication regarding increases in insurance against civil liability in respect of the use of motor vehicles

On 11 June 2016, the European Commission published a communication regarding the adaptation in line with inflation of minimum amounts laid down in Directive 2009/103/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (the "**Communication**").

The Communication provides that the amounts laid down in Article 9 of Directive 2009/103/EC, which were reviewed in line with the European index of consumer prices across all Member States, are increased as follows:

- In the case of personal injury, the minimum amount of cover is increased to EUR 1,220,000 per victim or EUR 6,070,000 per claim, whatever the number of victims;
- In the case of material damage, the minimum amount is increased to EUR 1,220,000 per claim, whatever the number of victims.

These amounts are adjusted automatically.

The Communication can be accessed via the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC0611(01)&from=EN

International Association of Insurance Supervisors ("IAIS")

(i) IAIS issues paper on impact of cyber risk for the insurance sector

On 14 April 2016, the IAIS published its issues paper on the impact of cyber risk for the insurance sector (the "**Issues Paper**"). Given the growth in cyber risks, concern over cybersecurity is growing across all sectors of the global economy. Insurers, regardless of size, or lines of business, collect, store and share large amounts of private and confidential data and therefore cybersecurity incidents can harm insurers by disrupting operations, compromising the protection of commercial and personal data and undermining confidence in the sector.

The Issues Paper provides the background to the cyber risk landscape, outlines cyber threats to the insurance sector, describes current best practices for cyber resilience, identifies examples of cybercrime in the insurance sector and explores related regulatory and supervisory issues and challenges such as the applicability of insurance core principles to cybersecurity and the supervisory response to cyber risk. The Issues Paper also provides a summary of responses to the IAIS survey conducted by the Financial Crime Task Force ("**FCTF**") on the subject of cybercrime in January – February 2015. The paper focuses on cyber risk to the insurance sector and mitigation of such risks but does not cover IT security risks more broadly.

The objectives of this Issues Paper are to raise awareness for insurers and supervisors of the challenges presented by cyber risk, including current and anticipated supervisory approaches for addressing these risks. It is intended to be primarily descriptive and is not meant to create supervisory expectations.

Feedback on the Issues Paper was to be provided by 13 May 2016. More information on the Issues paper and the consultation can be found at the following link:

http://www.iaisweb.org/page/news/consultations/closed-consultations/issues-paper-on-cyber-risks-to-the-insurance-sector

(ii) IAIS releases updated G-SII Assessment Methodology

On 16 June 2016, IAIS released the updated Assessment Methodology (the "**2016 Methodology**") for globally systemically important insurers, otherwise known as G-SIIs. In the 2016 Methodology, IAIS outlines a five-phase approach to the G-SII assessment process that includes fact-based qualitative and quantitative elements namely:

- Phases I and II involve the quantitative components of the 2016 Methodology, including a data collection phase (Phase I) and determination of a quantitative threshold (Phase II);

- Phase III complements the first two phases through the collection and analysis of additional quantitative or qualitative information that is not captured in Phase II indicators;

- Phase IV enables Prospective G-SIIs to receive information regarding that insurer's status through the first three Phases and present additional information relating to any aspect of the 2016 Methodology; and

- Phase V combines Phases I through IV to produce an overall assessment that concludes with the IAIS' recommendation to the Financial Stability Board.

The 2016 Methodology can be viewed at the following link:

http://www.iaisweb.org/news/press-release-iais-releases-updated-g-sii-assessment-methodology

(iii) IAIS releases Systemic Risk from Insurance Product Features

On 16 June 2016, IAIS issued a paper on Systemic Risk from Insurance Product Features (previously referred to as Non-traditional Non-insurance ("**NTNI**") activities and products). This paper is in response to the IAIS consultation launched in late 2015 seeking feedback from stakeholders on the NTNI definition and the relevant conclusions described in the consultation document.

IAIS reports that it has decided to discontinue using the NTNI product label and replace it with a more granular and nuanced assessment of product features, which identify macroeconomic exposure risk and substantial liquidity risk.

The paper is not meant to be a comprehensive analysis of the different ways an insurer's financial distress could be transmitted to the broader economy. The paper provides a framework that explains why certain product features and related activities may raise the potential for an insurer to pose systemic risk upon failure.

The IAIS press release and paper can be viewed via the following link:

http://www.iaisweb.org/page/supervisory-material/financial-stability-and-macroprudential-policy-and-surveillance/file/61179/updated-g-sii-assessment-methodology-16-june-2016

Insurance Europe

(i) Insurance Europe published paper market access issues for EU (re)insurers

On 11 April 2016, Insurance Europe published a summary of market access issues for European insurers and reinsurers. This paper highlights the key regulatory and market access issues that (re)insurance companies encounter in the United States, Brazil, Ecuador, India, Indonesia, China, Argentina and Russia which are important markets for the European Insurance industry.

The paper can be accessed via the following link:

http://www.insuranceeurope.eu/new-paper-warns-about-market-access-issues-eu-reinsurers

(ii) New-look Annual Report Published

On 24 May 2016, Insurance Europe published its 2015–2016 Annual Report which sets out Insurance Europe's position on all the major regulatory issues facing EU insurers.

It also includes a new feature of opinion pieces by external authors on current insurance topics, including Christiana Figueres, executive secretary of the UN Framework Convention on Climate Change on the insurance industry's contribution to tackling climate change.

The annual report can be found here:

http://insuranceeurope.eu/sites/default/files/attachments/Annual%20Report%202015-2016.pdf

Insurance Distribution Directive (formerly Insurance Mediation Directive 2 ("IMD2"))

(i) Update on Preparatory Guidelines on Product Oversight and Governance

On 2 June 2016, EIOPA issued the Preparatory Guidelines on product oversight and governance arrangements to be followed by insurance undertakings and insurance distributors (the "**Preparatory Guidelines**").

The aim of the Preparatory Guidelines is to support and provide guidance to NCAs in their preparatory steps leading to a consistent implementation of the organisational requirements on product oversight and governance arrangements contained in the Insurance Distribution Directive.

The Preparatory Guidelines minimise the risk of consumer detriment and mis-selling while at the same time fostering a cultural change which requires insurers and distributors to focus on the customer's interests throughout the product lifecycle.

EIOPA plans to review the Preparatory Guidelines once the deadline for transposition of Insurance Distribution Directive has passed (23 February 2018), to assess to what extent a revision of the Guidelines is necessary, in light of any implementing measures adopted under the Insurance Distribution Directive.

In accordance with Article 16(3) of the EIOPA Regulation, NCAs and financial institutions shall make every effort to comply with the Preparatory Guidelines and recommendations.

NCAs should confirm whether they comply or intend to comply with the Preparatory Guidelines on/before 2 August 2016. In the absence of a response by this deadline, NCAs will be considered as non-compliant to the reporting and reported as such.

The Preparatory Guidelines can be accessed via the following link:

https://eiopa.europa.eu/Publications/Reports/Final report on POG Guidelines.pdf

European Markets Infrastructure Regulation ("EMIR")

(i) Interest Rate Swap Clearing came into effect for certain market participants on 21 June 2016

On 1 December 2015, Commission Delegated Regulation (EU) 2015/2205 (the "**Delegated Regulation**") for the regulatory technical standards in respect of central clearing for the first classes of interest rate derivatives under EMIR was published in the Official Journal of the EU. The Delegated Regulation came into force on 21 December 2015.

The clearing obligation in the Delegated Regulation covers the following class of OTC interest rate derivatives denominated in the following currencies:

- Fixed-to-float interest rate swaps ("**IRS**") (also known as plain vanilla interest rate derivatives) for EUR, GBP, JPY, USD;

- Float-to-float swaps (also known as basis swaps) for EUR, GBP, JPY, USD;
- Forward rate agreements for EUR, GBP, JPY, USD; and
- Overnight index swaps for EUR, GBP, USD.

The Delegated Regulation sets out five different categories of counterparties to which the clearing obligation applies and specifies the phase-in periods for each. The different categories and the phase-in periods are as follows:

Category	Counterparty Type	Clearing Obligation Commencement
1	Clearing members of a recognised or authorised CCP for at least one of the classes of interest rate swaps covered by the Delegated Regulation	21 June 2016
2	Financial Counterparties ("**FCs**") and certain AIFs belonging to a group whose group aggregate month-end average of outstanding notional amount of non-centrally cleared derivatives is in excess of €8 billion using the month end average for January, February and March 2016	21 December 2016
3	FCs and AIFs not in either category 1 or 2 above	21 December 2018
4	Non-Financial Counterparties that exceed the clearing threshold ("**NFC+**") not falling within another category	21 December 2018
5	Category 1, 2 or 3 involving an intra-group transaction with a non-EU counterparty	21 December 2018 or, if by such date an equivalence decision has been adopted regarding a relevant third country, a specified date following such decision

A contract between two counterparties in different categories would be subject to the clearing obligation from the later date.

The obligation to clear the above referenced OTC derivative instruments will apply not only to transactions entered after the effective date applicable to the relevant category of counterparty but also to transactions concluded between the first authorisation of a CCP under EMIR (which took place on 18 March 2014) and the later date on which the clearing obligation actually takes effect for the relevant category of counterparty, unless the OTC derivative entered into has a remaining maturity lower than the minimum remaining maturities which are laid down in the Delegated Regulation and which are based on the category of counterparty and type of OTC derivative.

The text of the Delegated Regulation is available at this link:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R2205&from=EN

(ii) Clearing Obligation for two iTraxx Index Credit Default Swaps ("CDS")

Commission Delegated Regulation (EU) 2016/592 (the "**Second Delegated Regulation**") supplementing EMIR was published in the Official Journal of the EU on 19 April 2016 and came into effect twenty days later on 9 May 2016. The Second Delegated Regulation applies the clearing obligation to to iTraxx Europe Main and iTRaxx Europe Crossover (5 years Euro denominated). The Second Delegated Regulation follows a very similar phase-in to the phase-in of interest rate swaps (see (i) above).

The Second Delegated Regulation sets out five different categories of counterparties to which the clearing obligation applies and specifies the phase-in periods for each. The different categories and the phase-in periods are as follows:

Category	Counterparty Type	Clearing Obligation Commencement
1	Clearing members of a recognised or authorised CCP for at least one of the classes of CDS covered by the Second Delegated Regulation	9 February 2017
2	Financial Counterparties ("**FCs**") and certain AIFs belonging to a group whose group aggregate month-end average of outstanding notional amount of non-centrally cleared derivatives is in excess of €8 billion using the month end average for January, February and March	9 August 2017

	2016	
3	FCs and AIFs not in either category 1 or 2 above	9 February 2018
4	Non-Financial Counterparties that exceed the clearing threshold ("**NFC+**") not falling within another category	9 May 2019
5	Category 1, 2 or 3 involving an intra-group transaction with a non-EU counterparty	9 May 2019 or, if by such date an equivalence decision has been adopted regarding a relevant third country, a specified date following such decision

(iii) Proposed Clearing obligation for IRS in Norwegian Krone ("NOK"), Polish Zloty ("PLN"), and Swedish Krona ("SEK")

On 10 June 2016, the European Commission published a proposed delegated regulation (the "**Draft Regulation**") which would impose mandatory clearing obligations to IRS denominated in NOK, PLN and SEK. The Draft Regulation is subject to scrutiny by the European Parliament and the Council.

The Draft Regulation can be found at the following link:

http://ec.europa.eu/finance/financial-markets/docs/derivatives/160610-delegated-regulation_en.pdf

(iv) Margin Requirements of EMIR delayed

On 8 March 2016, the European Supervisory Authorities (the European Banking Authority ("**EBA**"), ESMA and the European Insurance and Occupational Pensions Authority ("**EIOPA**") (the "**ESAs**") submitted to the European Commission their final draft RTS on risk-mitigation techniques for OTC derivative contracts not cleared by a CCP under Article 11 of EMIR. The RTS detail the requirements for firms to exchange margins on non-centrally cleared OTC derivatives as well as specify the criteria regarding intragroup exemptions. The RTS also outline the list of eligible collateral for the exchange of margins, the criteria to ensure the collateral is sufficiently diversified and not subject to wrong-way risk, as well as the methods to determine appropriate collateral haircuts

The RTS reflect the minimum global standards for margin requirements for non-centrally cleared OTC derivatives introduced by the Basel Committee on Banking Supervision and

the International Organisation of Securities Commissions in September 2013 (and then revised in March 2015).

The RTS are stated to enter into force on 1 September 2016. However, the RTS must be endorsed by the European Commission and then accepted by the European Parliament and the Council and published in the Official Journal of the EU before they can take effect. With this in mind a spokeswoman for the European Commission has recently stated that this deadline (i.e. 1 September 2016) will not be met and that the deadline has been pushed out to the end of the year.

The RTS can be found at the following link:

https://www.esma.europa.eu/press-news/esma-news/esas-publish-final-draft-technical-standards-margin-requirements-non-centrally

(v) ESMA publishes updated Q&A on the implementation of EMIR

On 6 June 2016, ESMA updated its questions and answers paper (the "**Q&A**") on practical questions regarding EMIR. The updated Q&A includes new answers in relation to the clearing obligation, specifically about the self-categorisation that is necessary in order to establish which counterparties belong to which categories for the purpose of interest rate clearing. The Q&A also provide clarifications on how counterparties should handle the situation where some of their counterparties have not provided the information on the category they belong to.

A copy of the updated Q&A is available here:

https://www.esma.europa.eu/sites/default/files/library/2016-898_qa_xviii_emir.pdf

(vi) ESMA final report on draft RTS on indirect clearing arrangements under EMIR and MiFIR

On 26 May 2016, ESMA issued two final draft RTS on indirect clearing under MiFIR and EMIR respectively (the "**Draft Regulatory Technical Standards**"). The Draft Regulatory Technical Standards clarify provisions of indirect clearing arrangements for OTC and exchange-traded derivatives and help to ensure consistency and that an appropriate level of protection for indirect clients exists.

The Draft Regulatory Technical Standards include provisions on the following key points:

- Default management – in order to take into account that there can be a conflict of law between EU regulation and certain national insolvency regimes, the Draft Regulatory

Technical Standards propose an obligation of means, i.e. relying on having appropriate default procedures and committing to trigger them;

- Choice of account structures to be offered to indirect clients – the Draft Regulatory Technical Standards provide a choice of possible account structures that reflect the current practice in the OTC derivative and the exchange traded derivative markets in terms of level of segregation. Furthermore, the number of accounts required has been simplified to minimise the operational burden for market participants; and

- Long chains – the Draft Regulatory Technical Standards, under certain conditions, allow indirect clearing chains that are longer than the standard chains of four entities.

ESMA has sent its Draft Regulatory Technical Standards on indirect clients for endorsement to the European Commission which has three month to accept or reject them. This is followed by a non-objection period by the European Parliament and Council.

The Draft Regulatory Technical Standards can be found at the following link:

https://www.esma.europa.eu/sites/default/files/library/2016-725.pdf

Market Abuse Regulation

(i) Changes in the Market Abuse regime

Regulation 596/2014 on market abuse ("**MAR**"), and Directive 2014/57/EU on criminal sanctions for market abuse ("**CS MAD**") were published in the Official Journal of the EU on 12 June 2014 and will apply from 3 July 2016. MAR and CS MAD are collectively referred to as "**MAD II**". The existing Market Abuse Directive is repealed as of 3 July 2016.

MAR has direct effect in all Member States and does not require any further legislation for it to have effect in national laws.

CS MAD has been transposed by the European Union (Market Abuse) Regulations 2016 (the **"Regulations"**).

MAR aims at enhancing market integrity and investor protection. To this end, MAR updates and strengthens the existing market abuse framework by (a) extending its scope to new markets and trading strategies and (b) introducing new requirements and standards. The definition of financial instruments in MAR refers to the definition under MIFID II, which is very broad.

In addition, MAR does not limit its scope to financial instruments traded on regulated markets in the EU, but extends its requirements to financial instruments listed or traded on Multilateral Trading Facilities (**"MTFs"**) and Organised Trading Facilities (**"OTFs"**) and emission allowances, and to issuers who have made application for securities to be listed or traded on such markets.

Dillon Eustace has published an article on the impact of MAD II for listed investment funds. A copy of the article is available at the following link:

http://www.dilloneustace.ie/download/1/Publications/Financial%20Services/Market%20Abuse%20A%20New%20Regime%20for%20Investment%20Funds.pdf

The text of the Regulations is available here:

http://www.finance.gov.ie/sites/default/files/SI%20349%20of%202016.pdf

(ii) ESMA publishes updated Q&A on common operation of the Market Abuse Directive

On 1 April 2016, ESMA published a revised questions & answers paper (the "**Q&A**") on the common operation of the Market Abuse Directive.

The updated Q&A concerns information relating to the disclosure of inside information related to dividend policy, disclosure of inside information related to Pillar II requirements and a new question on investment recommendation, specifically on the definition of recommendation in Article 1(3) of the Commission Directive 2003/125/EC on the fair presentation of investment recommendations and the disclosure of conflicts of interest (Investment Recommendations Directive).

The purpose of the Q&A is to promote convergent implementation and application of the market abuse regime by providing responses to specific issues raised by the general public, market participants or competent authorities. The information found in the document is directed at competent authorities to ensure that in their supervisory activities their actions are converging along the lines of the response adopted by ESMA and at helping issuers, investors and other market participants by providing clarity on the existing market abuse requirements, rather than creating an extra layer of requirements.

The updated Q&A may be accessed via the following link:

https://www.esma.europa.eu/sites/default/files/library/2016-419_qa_market_abuse_directive.pdf

(iii) Delegated Regulation under MAR covering indicators of market manipulation, disclosure thresholds, trading during closed periods and notifiable managers' transactions published in the Official Journal of the EU

On 5 April 2016, the European Commission published Delegated Regulation (EU) 2016/522 (the "**Delegated Regulation**") supplementing MAR in the Official Journal of the EU along with Commission Implementing Regulation (EU) 2016/523 which sets out ITS (the "**Implementing Regulation**").

The Delegated Regulation sets out the following:

- The extension of the exemption from the obligations and prohibitions set out in MAR to certain public bodies and central banks of third countries in carrying out monetary, exchange rate or public debt management policy;
- The indicators of market manipulation (Annex I);
- The thresholds for disclosure by emission allowance market participants of inside information;
- The competent authority for the notifications of delays of public disclosure of inside information;
- Permission for trading during closed periods; and
- Types of transactions triggering the duty to notify managers' transactions.

The Implementing Regulation sets out the ITS on the format and template for the notification and public disclosure of managers' transactions.

The Delegated Regulation and Implementing Regulation entered into force on 25 April 2016 and 6 April 2016 respectively and will apply from 3 July 2016.

A copy of the Delegated Regulation can be found at the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0522&from=EN

A copy of the Implementing Regulation can be found at the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0523&from=EN

(iv) Responses to ESMA consultation on MAR guidelines on market soundings and delayed disclosure of inside information

On 27 April 2016, ESMA published the responses it has received to its January 2016 consultation on draft guidelines under MAR (the "**Consultation Paper**").

Article 17(11) of MAR provides that ESMA shall issue guidelines on legitimate interests of issuers to delay inside information and situations in which the delay of disclosure is likely to mislead the public.

In total 40 responses (the "**Responses**") were received to the Consultation Paper. ESMA will consider the feedback it has received to this consultation with a view to finalising two sets of guidelines and publishing a final report by early Quarter 3, 2016.

A copy of the Consultation Paper can be found at the following link:

https://www.esma.europa.eu/sites/default/files/library/2016-162.pdf

A full list of the Responses can be accessed via the following link:

https://www.esma.europa.eu/press-news/consultations/consultation-draft-guidelines-market-abuse-regulation

(v) Reference data submission under Article 4(1) of MAR

On 25 May 2016, the EU co-legislators concluded negotiations, agreeing on the postponement of the application date of Directive 2014/65/ EU ("**MiFID II**") and Regulation (EU) No 600/2014 ("**MiFIR**") until 3 January 2018.

Following the agreed later implementation of MiFID II and MiFIR, some of the MAR provisions will be aligned to the new MiFID II timelines. Specifically, the requirements set out under Articles 4(2) and 4(3) which relate to the notification requirements of competent authorities of trading venues shall apply from 3 January 2018. However, the requirements of Article 4(1) which relate to notification requirements of market operators of regulated markets, investment firms and market operators operating an MTF or OTF shall apply from 3 July 2016.

ESMA have released a publication on reference data submission under Article 4 or MAR, which is available at the following link:

https://www.esma.europa.eu/sites/default/files/library/2016-724_requirements.pdf

(vi) ESMA publish new Q&A on MAR

On 30 May 2016, ESMA published a new Q&A on MAR (the "**Q&A**"). The Q&A is aimed at competent authorities supervising MAR as well as market participants to whom MAR applies.

Currently the Q&A contains only one question covering the scope of the obligation to detect and report market abuse under Article 16(2) of MAR. The Q&A clarifies that ESMA considers that the obligation under Article 16(2) of MAR applies broadly and "persons professionally arranging or executing transactions" include "buy side" firms such as investment management firms (AIFs and UCITS managers) as well as firms professionally engaged in trading on own account (proprietary trades).

The Q&A will be updated where relevant as and when new questions or issues arise. It will also be under continuous review for the possibility of converting some of the material into ESMA guidelines and recommendations.

A copy of the Q&A can be found here:

https://www.esma.europa.eu/sites/default/files/library/2016-738_mar_qa.pdf

(vii) ESMA publish responses to consultation on MAR guidelines on disclosure of information on commodity derivatives markets or related spot markets

On 1 June 2016, ESMA published the responses (the "**Responses**") it received to its consultation on draft guidelines relating to information expected, or required, to be disclosed on commodity derivatives markets or related spot markets under MAR (the "**Consultation**").

The purpose of the draft guidelines is to establish a non-exhaustive indicative list of information which is reasonably expected or is required to be disclosed in accordance with legal or regulatory provisions on the relevant commodity derivative markets or spot markets as referred to in Article 7(1)(b) of MAR

Respondents to the consultation include the Futures Industry Association, ISDA, the London Metal Exchange and the Federation of European Securities Exchanges.

ESMA will consider the feedback it has received to this Consultation with a view to finalising the guidelines and publishing a final report by later Quarter 3, 2016.

A copy of the Consultation may be accessed via the following link:

https://www.esma.europa.eu/press-news/esma-news/esma-consults-future-mar-list-information-regarding-commodity-and-spot-markets

The Responses may be accessed via the following link:

https://www.esma.europa.eu/press-news/consultations/consultation-future-mar-list-information-regarding-commodity-and-spot#TODO

(viii) ESMA rejects European Commission amendments to ITS on public disclosure of inside information under MAR

On 17 June 2016, ESMA published an opinion on draft ITS on the technical means for appropriate public disclosure of inside information and for delaying the public disclosure of inside information required under MAR (the "**Opinion**").

The Opinion responds to a letter sent in May 2016 by the European Commission relating to ESMA's proposed ITS on public disclosure of inside information required under Article 17(10) of MAR. The European Commission requested amendments to the ITS because it considered that ESMA was imposing an undue double disclosure of inside information on those emission allowance market participants that would be subject to disclosure requirements under both MAR and Regulation (EU) 1227/2011 on wholesale energy market integrity and transparency ("**REMIT**").

ESMA states that it disagrees with the European Commission's views and, consequently, it does not intend to propose a revised draft ITS to take account of the European Commission's amendments. In the opinion it insists that the proposed amendments would remove two essential features of the system:

- The active dissemination of inside information; and
- The marking of that information as inside information under MAR.

ESMA ultimately believes this would damage the disclosure regime under MAR and expose investors in emission allowances and financial instruments related to them to more risks.

A copy of the Opinion may be accessed via the following link:

https://www.esma.europa.eu/sites/default/files/library/2016-982_opinion_on_mar_its_on_public_disclosure.pdf

On 30 June 2016, the Commission Implementing Regulation (EU) 2016/1055 supplementing MAR with regard to the technical means for appropriate public disclosure of

inside information and for delaying the public disclosure of inside information was published in the Official Journal of the EU.

The ITS as set out in the Implementing Regulation have been adopted in substantially the same form as set out in ESMA's draft ITS, which were submitted to the European Commission on 28 September 2016.

The Implementing Regulation will come into force on 1 July 2016 and shall apply from 3 July 2016.

(ix) Delegated Regulations and Implementing Regulation supplementing MAR published in the Official Journal of the EU.

On 10 June 2016, the following Commission Delegated Regulations supplementing MAR were published in the Official Journal of the EU:

- Commission Delegated Regulation (EU) 2016/908 supplementing MAR laying down regulatory technical standards on the criteria, the procedure and the requirements for establishing an accepted market practice and the requirements for terminating it or modifying the conditions for its acceptance; and

- Commission Delegated Regulation (EU) 2016/909 supplementing MAR with regard to regulatory technical standards for the content of notifications to be submitted to competent authorities and the compilation, publication and maintenance of the list of notifications.

On 17 June 2016, the following Commission Delegated Regulations and Commission Implementing Regulations supplementing MAR were published in the Official Journal of the EU:

- Commission Delegated Regulation (EU) 2016/957 supplementing MAR with regard to regulatory technical standards for the appropriate arrangements, systems and procedures as well as notification templates to be used for preventing, detecting and reporting abusive practices or suspicious orders or transactions;

- Commission Delegated Regulation (EU) 2016/958 supplementing MAR with regard to regulatory technical standards for the technical arrangements for objective presentation of investment recommendations or other information recommending or suggesting an investment strategy and for disclosure of particular interests or indications of conflicts of interest;

- Commission Implementing Regulation (EU) 2016/959 supplementing MAR laying down implementing technical standards for market soundings with regard to the

systems and notification templates to be used by disclosing market participants and the format of the records in accordance with MAR; and

- Commission Delegated Regulation (EU) 2016/960 supplementing MAR with regard to regulatory technical standards for the appropriate arrangements, systems and procedures for disclosing market participants conducting market soundings.

On 30 June 2016, the Commission Delegated Regulation (EU) 2016/1052 supplementing MAR with regard to regulatory technical standards for the conditions applicable to buy-back programmes and stabilisation measures was published in the Official Journal of the EU.

All of the above Delegated Regulations and Implementing Regulations shall apply from 3 July 2016.

Prospectus Directive

(i) ESMA updates its Questions and Answers document on the Prospectus Directive

On 6 April 2016, ESMA published an updated questions and answers paper on the Prospectus Directive (the "**Q&A**"). The purpose of this document is to promote common supervisory approaches and practices in the application of the Prospectus Directive and its implementing measures. It does this by providing responses to questions posed by the general public and competent authorities in relation to the practical application of the Prospectus Directive.

The content of this document is aimed at competent authorities under the Prospectus Directive to ensure that in their supervisory activities their actions are converging along the lines of the responses adopted by ESMA. However, these responses are also meant to provide market participants with an indication of what constitutes proper implementation of the Prospectus Directive rules. The answers are intended to help issuers of securities by providing clarity as to the content of the Prospectus Directive requirements without necessarily imposing an extra layer of requirements.

The Q&A contains the following:

- New Question 97 – Considers that where a recent change has triggered the requirement to disclose pro forma financial information, an additional column illustrating pro forma capitalisation and indebtedness can be presented. It should be consistent with the pro forma financial information presented elsewhere in the prospectus. Adjustments may be explained by referring to pro forma financial information elsewhere in the prospectus.

- New Question 98(a) – Provides that it is possible for an issuer to continue an offer beyond the validity of a base prospectus, however ESMA considers that the offer must have a start date and expected end date when a base prospectus is used for an offering of non-equity securities.

- New Question 98(b) – Provides that specific conditions should be fulfilled in order for the issuer to continue the offer beyond the validity of the initial base prospectus. The new base prospectus should be approved and published no later than on the last day of validity of the initial base prospectus.

The Q&A can be found at the following link:

https://www.esma.europa.eu/sites/default/files/library/2016-576_24th_version_qa_prospectus_related_issues.pdf

(ii) ESMA publishes peer review report on the Prospectus approval process

On 30 June 2016 ESMA published a peer review on the efficiency and effectiveness of EU national securities markets regulators' approval of prospectuses (the "**Peer Review**"), being the disclosure documents prepared by issuers when they want to market their securities to EU investors.

Overall, ESMA found that, while national regulators were in general sufficiently resourced and approved prospectuses within legal deadlines, there were differences in national practices which would benefit from greater convergence.

The Peer Review covered a two-year period from January 2013 to December 2014. The main findings were as follows:

- Prospectuses are often complex and may therefore be difficult for investors to understand, according to external stakeholders interviewed by ESMA. Main concerns include their length, the format of the summary section, and the amount and manner in which information is incorporated by reference;

- National regulators have different interpretations of certain disclosure requirements which would benefit from further harmonisation, as would the way in which national regulators look at risk factors associated with issuers and their securities;

- Approval times vary substantially among national regulators, however, the driving factors largely fall outside national regulators' responsibilities and include:

  - Quality of the first draft they receive;

- Issuers' response times to queries;
- The quality of those responses; and
- The complexity of issuers' circumstances.

Nevertheless, ESMA also identified scope for further improving the efficiency of regulators' approval procedures and the seasonal nature of prospectus approvals raised some concerns that national regulators could struggle to handle high volumes of documents while maintaining rigorous scrutiny during peak periods.

The findings of this peer review will feed into ESMA's supervisory convergence work which is one of its main priorities for 2016-2020. ESMA intends to take a closer look, among other things, at the intelligibility of prospectuses, the disclosure of risk factors and the interpretation of certain requirements.

The EU's Prospectus Directive and Regulation is currently being revised as part of the European Commission's Capital Markets Union and may address some of the legislative clarifications identified during the peer review as appropriate.

A copy of the Peer Review is available at the following link:

https://www.esma.europa.eu/sites/default/files/library/2016-1055_peer_review_report.pdf

Statutory Audit Directive

(i) Statutory Audit Directive transposed into Irish law

The requirements of the Statutory Audit Directive 2014/56/EU ("**SAD**") became applicable on 17 June 2016. SAD provides that Public Interest Entities will be required to rotate their auditors every 10 years and also restricts those auditors from providing certain non-audit services to the relevant Public Interest Entity.

The definition of Public Interest Entities includes those entities, which are governed by the law of a Member State, whose transferable securities are admitted to trading on a regulated market such as the Main Securities Market of the ISE.

The restriction on the provision of non-audit services will have immediate effect for all Public Interest Entities for financial years commencing on or after 17 June 2016.

In Ireland SAD has been transposed by the European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU and Regulation (EU) No 537/2014) Regulations 2016 (S.I. No. 312/2016) (the "**Regulations**"), which replace the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 (S.I. No. 220/2010). The Regulations came into operation on 17 June 2016.

Consequential amendments to the Companies Act are included in the Regulations.

On 17 June 2016, the European Commission published an updated frequently asked questions document (the "**FAQ**") relating to the new statutory audit rules in the EU.

A copy of the Regulations is available here:

http://www.irishstatutebook.ie/eli/2016/si/312/made/en/pdf

A copy of the FAQ is available at the following link:

http://europa.eu/rapid/press-release_MEMO-14-256_en.htm

Consumer Rights Directive

(i) Commission publishes roadmap for evaluation of Consumer Rights Directive

On 25 April 2016, the European Commission published a roadmap for its evaluation of the Consumer Rights Directive ("the **Directive**"). The Directive aims to achieve a high level of consumer protection across the EU. More specifically, it regulates some aspects of distance, off-premises and on-premises contracts between consumers and business.

The evaluation will cover the Directive in its entirety and aims to assess its overall impact on the internal market by assessing its relevance, efficiency, coherence, effectiveness and added value. The assessment should take into account the impact of the Directive on businesses, consumers, cross-border trade and on national trade. The evaluation will cover the period since the Directive entered into application (2014) and will cover all EU Member States.

The results and conclusions from the evaluation will allow policy-makers to decide whether the Directive has fulfilled its objectives.

The evaluation report on the Directive is planned for adoption in the first quarter of 2017. The outcome of the evaluation of the Directive will feed into the conclusions of the fitness checks carried out in parallel of other key EU Directives in the area of consumer and marketing law.

For the full roadmap for evaluation of Consumer Rights Directive see:

http://ec.europa.eu/smart-regulation/roadmaps/docs/2017_just_001_crd_evaluation_en.pdf

On 10 May 2016, the Consultation Strategy on the evaluation of the Directive (the **"Consultation Strategy"**) was published. This outlines the objectives of the consultation which include, amongst others, identifying provisions which add value, identifying problems, detecting effects of the national divergences in transposition, and collecting view on potential options for future actions.

The Consultation Strategy outlines the relevant stakeholders and key aspects of the consultation for each of the relevant stakeholders. It also lists the types of consultations that will be carried out during the evaluation of the Directive which include the following:

- Online public consultation of 12 weeks for the general public to participate in the evaluation;
- Targeted consultation of organisations (i.e. Member states authorities, consumer, businesses and associations) – by online surveys and interviews;
- The preliminary findings will be presented at the 2016 European Consumer Summit, which will give all relevant stakeholders the opportunity to comment and provide the Commission with further inputs.

The Consultation Strategy can be accessed via the following link:

http://ec.europa.eu/consumers/documents/consultation_strategy_on_the_evaluation_of_the_crd.pdf

(ii) European Commission Public consultation for the Fitness Check of EU consumer and marketing law

On 12 May 2016, the European Commission launched a public consultation for the Fitness Check of the following key EU consumer and marketing law directives (the "**Public Consultation**"):

- The Misleading and Comparative Advertising Directive (2006/114/EC);
- The Unfair Contract Terms Directive (93/13/EC)
- The Price Indication Directive (98/6/EC);

- The Unfair Commercial Practices Directive (2005/29/EC);
- The Sales and Guarantee Directive (1999/44/EC); and
- The Injunctions Directive (2009/22/EC);

The Public Consultation also covers the Consumer Rights Directive 2011/83/EU, which is subject to a separate evaluation (see section (i) above).

This Fitness Check involves a comprehensive policy evaluation aimed at assessing whether the regulatory framework for consumer and marketing law is 'fit for purpose' and is part of the European Commission's Regulatory Fitness and Performance Programme.

The Public Consultation includes questions on how EU consumer and marketing rules could be modernised and the results will be relevant in the context of the European Commission's proposal for a Directive on certain aspects concerning contracts for the online and other distance sales of goods.

The consultation closes on 2 September 2016. The European Commission intends to assess and summarise the responses and publish the summary on the webpage of the Fitness Check.

The Public Consultation can be accessed at the following:

https://ec.europa.eu/eusurvey/runner/ConsumerLawFitnessCheck

More information on the Fitness Check can be found at the following link:

http://ec.europa.eu/consumers/consumer_rights/review/index_en.htm

Pensions Update

(i) Pensions Authority publishes the second and third tranches of the Codes of Governance for Defined Contribution Schemes

On 4 April 2016, the Pensions Authority published the second tranche of the Pension Authority's Codes of governance for Defined Contribution schemes (the "**DC Codes**").

This second tranche of DC Codes provide for the following:

- DC Code 4: *Collection and remittance of contributions*: Trustees are expected to ensure that the contributions payable by the employer and members of the scheme are remitted in good time.

- DC Code 5: *Investing scheme assets:* Under this DC Code Trustees are expected to ensure the proper investment of scheme assets and should implement and oversee a default investment strategy.

- DC Code 6: *Paying benefits:* Trustees are expected to provide for the payment of the correct benefits to eligible members and other beneficiaries at the time they are due to be paid.

On 14 June 2016, the Pensions Authority published the third tranche of DC Codes namely:

- *DC Code 7: Keeping Records*: Trustees are expected to ensure that the records for their scheme are accurate, complete and up-to-date.

- *DC Code 8: Data Protection*: Trustees are expected to ensure that they are aware of their obligations as data controllers and that the Data Protection Acts are complied with.

- *DC Code 9: Risk Management:* Trustees are expected to establish a risk management framework to identify, evaluate and manage the risks that are critical to the scheme and which are likely to have significant impact on the scheme's ability to provide member benefits.

These DC Codes apply to trustees of all DC occupational schemes and will supplement the Pension Authority's Trustee Handbook and therefore should be read conjunction with the Trustee Handbook.

The DC Codes are intended to provide practical guidance on the requirements of pensions legislation and set out the standards of governance expected of trustees of all DC occupational pension schemes.

The DC codes are available under Codes of governance for DC schemes in the Publications section of this website and available at the following link:

http://www.pensionsauthority.ie/en/Publications/Codes_of_governance_for_DC_schemes/

(ii) Occupational Pension Schemes (Revaluation) Regulations 2016

On 7 April 2016, the Occupational Pensions Schemes (Revaluation) Regulations 2016 (S.I. 152 of 2016) (the "**Revaluation Regulations 2016**") were published. The

Revaluation Regulations 2016 provide for the changes in the percentage by which the amount of a preserved benefit is to be increased in a specified year. For 2015, the revaluation or preserved benefit under section 33 of the Pensions Act 1990 shall be at -0.3%.

On 21 April 2016, the Department of Social Protection published an information note on the Revaluation Regulations 2016 which provides a background to the Revaluation Regulations and notes that this is the first time that the revaluation percentage has been negative.

The Re-evaluation 2016 Regulations can be accessed via the following link:
http://www.irishstatutebook.ie/eli/2016/si/152/made/en/print

The Department of Social Protection's information note on the Revaluation Regulations 2016 can be accessed via the following link:

https://www.welfare.ie/en/downloads/Occupational-Pension-Schemes-Revaluation-of-preserved-benefits-210416.pdf

(iii) Occupational Pension Schemes (Section 48A) Regulations, 2016

On 7 April 2016, the Occupational Pension Schemes (Section 48A) Regulations 2016 (S.I. 155 of 2016) (the "**Section 48A Regulations**") were published.

The Section 48A Regulations relate to Section 48A of the Pensions Act 1990 which provides for the payment of certain amounts by the Minister for Finance to the trustees of a relevant scheme which is being wound up after 25 December 2013, where the resources of that scheme are not sufficient to discharge the liabilities in respect of certain benefits.

The Section 48A Regulations require trustees of a relevant scheme to comply with any guidelines and guidance notes in respect of the preparation of the statement referred to in Section 48(A)(1) and an application by the trustees under Section 48A(2) of the Pensions Act 1990 issued by the Pensions Authority under Section 10 of the Pensions Act 1990 and made by the Minister for Social Protection under Section 48A(10)(a) of the Pensions Act 1990.

The Section 48A Regulations also amend the provisions of the Occupational Pension Schemes (Professional Guidance) Regulations, 2005 to include guidance made by the Pensions Authority in relation to the preparation of the statement under section 48A(1) and an application by the trustees under section 48A(2).

http://www.irishstatutebook.ie/eli/2016/si/155/made/en/pdf

In March 2016, the Minister for Social Protection issued Guidelines for Trustees under Section 48A(10)(a) of the Pensions Act 1990 in respect of the Actuarial Statement in Section 48A(1) and the Application by Trustees to the Pensions Authority under Section 48A(2) (the "**Ministerial Guidelines**"). These Ministerial Guidelines specify the requirements for trustees when directing the actuary to prepare the statement under Section 48A(1). The Ministerial Guidelines also provide that, when making an application to the Pension's Authority for certification of the relevant amount under 48A(2), the trustees must submit to the Pensions Authority the information referred to in the guidance notes issued by the Pensions Authority and prescribed by regulations made by the Minister for Social Protection under section 48A(11). Applications to the Pensions Authority under section 48A(2) must be made by the trustees no later than 9 months after the date of winding up the scheme.

The Ministerial Guidelines can be accessed via the following link:

https://www.welfare.ie/en/downloads/Ministerial-Guidelines-Section-48A(10)(a)-statementandapplication.pdf

The Minister for Social Protection also issued an application form to be submitted to the Minister for Social Protection for payment by the Minister of Finance under Section 48A(4) of the Pensions Act 1990. This can be accessed via the following link:

https://www.welfare.ie/en/pdf/Application-to-the-Minister-for-Social-Protection-under-Section-48A(4).pdf

On 11 April 2016, the Pensions Authority issued its prescribed guidance (the "**Prescribed Guidance**") in relation to Section 48A of the Pensions Act 1990 which should be read in conjunction with the abovementioned Ministerial Guidelines and those prescribed by regulations made by the Minister for Social Protection under Section 48A(11). The Prescribed Guidance is intended to assist with the details of the calculations to be used in the preparation of the Actuarial Statement and provide details on the information to be included in the application to the Pensions Authority for certification. The Prescribed Guidance is available at the following link:

http://www.pensionsauthority.ie/en/Regulation/Statutory_guidance/Section_48A_-_Prescribed_Guidance/Section_48A_-_Prescribed_Guidance_Version_1_April_2016_.pdf

In March 2016, the Minister for Social Protection also issued Guidelines under Section 48A(10)(b) in respect of certification by the Pensions Authority of a "relevant amount" under Section 48A(3) of the Pensions Act 1990 (the "**Certification Guidelines**"). The Certification Guidelines set out the procedure to be followed by the Pensions Authority before certifying a relevant amount and can be accessed via the following link:

https://www.welfare.ie/en/downloads/Ministerial-Guidelines-Section48A(10)(b)-certification-of-relevant-amount.pdf

(iv) EIOPA publishes its opinion to EU Institutions on a Common Framework for Risk Assessment and Transparency for IORPs

On 14 April 2016, EIOPA published its opinion to EU Institutions on a Common Framework for Risk Assessment and Transparency for IORPs (the "**Opinion**"). In the Opinion, EIOPA advises on the introduction of a harmonised EU-wide common framework for risk assessment and transparency for IORPs based on common valuation rules and a standardised risk assessment that will ensure a market-consistent and risk-based approach which will provide an objective and transparent view of the financial situation of IORPs and further strengthen risk management.

In the Opinion EIOPA's advises/recommends, amongst other things, that:

- The common framework consists of a market-consistent balance sheet and a standardised risk assessment;
- The main elements of the common framework balance sheet and the outcome of the standardised risk assessment have to be publicly disclosed;
- That national supervisory authorities are provided with sufficient powers to take supervisory action based on the outcomes of the common framework, if deemed necessary to achieve their supervisory objectives as defined by EU and national law;
- It is essential that the common framework for risk assessment and transparency is applied in a proportionate manner and to allow for simplifications to cater for the differences between IORPs throughout Europe; and
- The introduction of the common framework does not have to be accompanied by transitional measures/periods, since EIOPA advises retaining existing funding and capital requirements at this point in time. However, there will be a need for a preparatory phase, before reporting under the common framework can commence.

In the Opinion, EIOPA notes that improved transparency and risk management for IORPs would enhance the protection of members and beneficiaries, foster the functioning of the internal market and reduce the scope for regulatory arbitrage.

EIOPA published the Opinion on its own initiative and it is not intended to interfere with the existing European Commission's proposal for the revision of the IORP Directive ("**IORP II**") published on 27 March 2014, which is currently being negotiated in trilogue.

EIOPA notes that it is ready to cooperate with the European Parliament, the Council of the EU and the European Commission to implement the common framework for risk assessment and transparency for IORPs into EU legislation.

The Opinion can be accessed via the following link:

https://eiopa.europa.eu/Publications/Opinions/EIOPA-BoS-16-075-Opinion_to_EU_Institutions_Common_Framework_IORPs.pdf#

(v) Social Welfare and Pensions Act 2015 (Part 3) (Commencement) Order 2016

On 5 May 2016, the Social Welfare and Pensions Act 2015 (Part 3) (Commencement) Order 2016 (S.I. 229 of 2016) was published (the "**Commencement Order**") which appointed 9 May 2016 as the day that Part 3 of the Social Welfare and Pensions Act 2015 came into operation.

Part 3 of the Social Welfare and Pensions Act 2015.provides for amendments to the Pensions Act 1990 to allow the holder of the office of the Financial Services Ombudsman to also hold the office of the Pensions Ombudsman.

The Commencement Order can be accessed via the following link:

http://www.irishstatutebook.ie/eli/2016/si/229/made/en/pdf

Central Bank of Ireland

(i) Central Bank publishes research on consumer perceptions of complaints handling in regulated firms

On 11 May 2016, the Central Bank published the findings of commissioned research undertaken by PWC on a panel of over 1000 customers to understand customers' perception of complaints handling process in regulated firms (the "**Paper**"). The Consumer Protection Code 2012 introduced a strong framework for complaints handling, and the purpose of the research was to assess customer's experiences and perceptions of how firms are applying this framework.

The research found only 41% of respondents felt they were treated fairly and only 39% of respondents felt satisfied with how the complaint was handled. It was also found that 52% of respondents who were given a named contact during the process were satisfied with how their complaint was handled as opposed to 29% of those not given a named contact. The timely resolution of the complaint was regarded as an important aspect of the complaint process by 50% of those respondents who made a complaint.

The Central Bank will use the results of this research to contribute to wider discussions with industry and policy makers both domestically and internationally in the area of complaints handling.

A full copy of the Paper can be found here:

http://www.centralbank.ie/regulation/processes/consumer-protection-code/compliance-monitoring/Documents/Complaints%20Handling%20within%20Regulated%20Financial%20Services%20Firms-%20Consumer%20Research.pdf

(ii) Central Bank publishes updated Guidance Note for Retail Intermediaries completing an application for authorisation

On 13 June 2016, the Central Bank issued an updated Guidance Note on completing an application for authorisation as a retail intermediary in Ireland under the European Communities (Insurance Mediation) Regulations 2005 ("**IMR**"); the Investment Intermediaries Act 1995 ("**IIA**"); the Consumer Credit Act 1995 ("**CCA**") and the European Union (Consumer Mortgage Credit Agreements) Regulations 2016 ("**CMCAR**").

The Central Bank is the body responsible for the authorisation of retail intermediaries. To obtain an authorisation as a retail intermediary firm, an application must be submitted to the Central Bank which demonstrates that the applicant is in a position to comply with the appropriate regulatory requirements.

The Guidance Note sets out the criteria for assessing applicants, how to make an application and detailed guidance on completing the application form. The Appendix to the Guidance Note provides details on the headings to be covered in the Business Plan and Programme of Operations.

The Guidance Note can be accessed via the following link:

http://www.centralbank.ie/regulation/industry-sectors/retailintermediaries/Documents/130616%20RI%20Guidance%20Note.pdf

(iii) Central Bank publishes Retail Intermediary Annual Return Mock-up

On 14 June 2016, the Central Bank published an Annual Return Mock-up for Retail Intermediaries on its website to provide guidance to retail intermediaries on completing the annual return. The Central Bank notes that it may be useful to print off a copy of the Annual Return Mock-up and run through and complete it offline before you complete it online. The Annual Return Mock-Up is available at the following link:

https://www.centralbank.ie/regulation/industry-sectors/retailintermediaries/pages/annualonlinereturns.aspx

(iv) Central Bank publishes first issue of its Insurance Quarterly Newsletter

On 29 June 2016, the Central Bank published the first edition of its Insurance Quarterly Newsletter, which is intended to provide the insurance industry and other interested stakeholders with insurance related information, updates and feedback from the Central Bank.

This edition of the Insurance Quarterly Newsletter contains the following sections:

- *Reporting update*: This section includes updates on the Solvency II Day 1 & Quarter 1 Reporting and changes to working in technical specification in NST.07;
- *In-Situ Applications for PCF48 (Head of Actuarial Function):* This section clarifies for those occupying the Head of Actuarial Role at 31 December 2015 and who submitted in-situ application prior to the 31 May 2016 deadline may continue in that role and do not require the pre-approval of the Central Bank. However, those who did not submit the in-situ application prior to the 31 May 2016 deadline are required to follow the IQ process for the appointment to the role of Head of Actuarial Function ("**PCF48**").
- *The 2015 FLAOR Review:* The Central Bank issued feedback on the 2015 FLAOR reports. High and Medium High undertakings can expect to receive supplementary feedback and if the undertaking has not already received this feedback, it should expect to receive it in Quarter 3.
- *Policy update*: This section provides information on the consultations, surveys and other work being carried out by the Central Bank and also provides overviews of information notes issued by the Central Bank and other policy updates.
- *EIOPA updates*: This section includes information on the EIOPA Insurance Stress Test 2016 and the EIOPA Solvency II Guidelines and other consultations and publications by EIOPA.
- *Forward planner*: This section sets out submission deadlines for regulatory reporting and closing dates of consultations.

The first edition of the Insurance Quarterly Newsletter is available via the following link:

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/Pages/Publications.aspx#Qtrly

Financial Services Ombudsman

(i) Financial Services Ombudsman ("FSO") publishes Annual Review 2015

On 31 March 2016, the FSO published its annual review for the year January to December 2015 (the "**Annual Review**"). The Annual Review sets out that 4872 complaints were received in 2015 compared to 4477 in 2014. In total the office had almost 2000 active complaints at the end of 2015, in part due to the legacy of an increased number of complaints in recent years.

The type of investment related complaints received in 2015 were broadly similar to 2014 with 36% of investment complaints related to pension and endowment products. The main product complained about in insurance was motor insurance which accounted for 20% of insurance complaints, with life assurance complaints representing 14% of insurance complaints.

In addition, the office dealt with over 14,600 telephone queries and received 92,000 website hits in 2015.

Despite the reluctance to engage in formal mediation it continued to be the case throughout 2015 that many complaints were resolved by agreement between the parties as they progressed through the office. A total of 822 complaints were settled without the need for an adjudication or formal finding. A total of 1,206 complaints were closed by way of formal adjudication and finding. Of the findings issued, 12% of complaints were upheld, 23% were partly upheld and 65% were not upheld.

A link to the Annual Review is available here:

https://financialombudsman.ie/documents/2015%20Annual%20Review.pdf

Companies Act 2014

(i) Conversion under the Companies Act

Under the Companies Act, all existing private companies limited by shares have the option of converting to one of the new company types (LTD or DAC) during a transition period which ends on 30 November 2016. Companies that have not applied to the CRO to be converted either to a DAC or a LTD during the transition period will be automatically converted to an LTD by the CRO after 1 December 2016.

Companies wishing to be converted to a DAC must, under the Companies Act, pass an ordinary resolution to convert by 31 August 2016 and should follow up by filing a Form N2

and amended Constitution with the CRO as soon as possible thereafter. Companies wishing to convert to an LTD and adopt a new Constitution should do so as soon as possible, as the CRO cannot guarantee that applications received at the very end of the transition period will be processed before 30 November 2016.

Directors of companies wishing to be converted to a new company type are therefore requested to consider this matter at the earliest opportunity and to file your conversion applications with the CRO in good time.

(ii) Directors' Compliance Statement under the Companies Act 2014

The Companies Act 2014 (the **"Act"**), which consolidated existing company law, reintroduced the company law obligation (albeit amended) on directors of certain companies to make an annual compliance statement in their directors' report. The statement must acknowledge that the directors are responsible for securing the company's compliance with its 'relevant obligations' and confirm that certain things have been done, or if they have not been done, explain why they have not been done. This obligation is separate and distinct to the obligation under the notice served on insurance and reinsurance undertakings under Section 25 of the Central Bank Act 1997 requiring those undertakings to submit an annual compliance statement to the Central Bank, which also remains in force.

The directors' compliance statement requirement under the Act will apply to:

- Public limited companies (**"plc"**); and
- 'large' private companies limited by shares, designated activity companies and guarantee companies which have a balance sheet total exceeding €12.5 million and a turnover exceeding €25 million. These prescribed thresholds are applied on an individual company basis as opposed to a group basis.

Directors of all insurance or (re)insurance undertakings that are structured as a plc or that meet the thresholds of a 'large' private company will be obliged to sign a compliance statement and include this in their directors' report for years ending on or after 31 May 2016.

In light of the fact that the requirement to prepare a directors' compliance statement will apply to years ending on or after 31 May 2016, we recommend that the directors of insurance and reinsurance companies to which this requirement applies take the necessary steps to comply with the requirement to produce a directors' compliance statement.

Dillon Eustace has issued a publication relating to directors' compliance statements under the Act, a copy of which is available at the following link:

http://www.dilloneustace.ie/download/1/Publications/Regulatory%20and%20Compliance/Directors%20Compliance%20Statement%20under%20the%20Companies%20Act%202014%20Impact%20on%20Insurance%20Reinsurance%20Undertakings%20for%20years%20ending%20on%20after%2031%20May%202016.pdf

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

(i) European Commission publish roadmap relating to its proposal for a Directive to amend MLD4

On 7 April 2016, the European Commission published a roadmap (or inception impact assessment) relating to its proposal for a Directive to amend MLD4 (the "**Roadmap**"). Points of interest in the Roadmap include the following:

- The Financial Action Task Force (FATF) is currently examining what further actions can be taken to strengthen the fight against terrorist financing. However, this work will take time, and even if it leads to a change in the FATF standards (which is not certain) the standards would not be legally binding;

- A targeted data collection is currently being conducted to fill a limited number of information gaps that the European Commission has identified. Initial desk research has been based on MLD4 preparatory work. The European Commission already has some data from card schemes, but reliable data on virtual currencies, both at the EU and national levels, remains a challenge. The Roadmap lists the areas relating to which the European Commission needs further information and data;

- To collect the additional data, the European Commission launched a survey, in December 2015, asking financial intelligence units (FIUs) and public authorities for policy views and data about the agreed problem areas relating to terrorism finance. Also in December 2015, the European Commission launched a consultation asking affected stakeholders (including the payment industry, virtual currencies market players, and the financial services sector) about terrorist financing challenges and potential solutions. Due to "political urgencies" and against the background that the envisaged amendments are targeted, the European Commission believes that a comprehensive public consultation is not needed;

- The relevant issues will be covered, as appropriate, by extending or building on the already existing implementation plan that seeks to ensure that MLD4 is transposed into national legislation no later than 26 June 2017;

- The five targeted amendments concern issues that were already envisaged or discussed during the EU-level negotiations on MLD4; and

- Section E of the Roadmap sets out the European Commission's preliminary assessment of the expected impacts of the envisaged amendments. The assessment is based on the consultations already carried out or currently ongoing. Among other things, taking into account the fact that this initiative is limited and targeted, the European Commission considers that negative economic impacts should be small and that the administrative burden will be limited.

The proposed Directive forms part of the European Commission's February 2016 action plan to strengthen the fight against terrorism. There is no mention in the Roadmap of the Commission's call on Member States to bring forward the date for effective transition and entry into application of MLD4 to the fourth quarter of 2016 at the latest, which was set out in the action plan. The European Commission is expected to publish the proposed Directive to amend MLD4 by the second quarter of 2016 at the latest.

A copy of the Roadmap is available at the link below:

http://ec.europa.eu/smart-regulation/roadmaps/docs/2016_just_054_amld_en.pdf

(ii) Cayman Beneficial Ownership – business as usual, but faster

The Cayman Government announced on 12 April 2016 that it has signed an agreement with the United Kingdom to make enhancements to its beneficial ownership system.

The agreement confirms a commitment to establish a central technical platform to ensure that:

- Law enforcement and tax authorities in the UK and Cayman can access company beneficial ownership information subject to relevant safeguards;

- Law enforcement and tax authorities in the UK and Cayman can quickly identify all companies that a particular beneficial owner has a stake in; and

- Companies and their beneficial owners are not alerted to the investigation of their information.

No public access will be given to information on the beneficial ownership of Cayman companies. The mechanism will build on the existing regime in Cayman which prevents the incorporation of companies without the use of a Cayman licensed entity which is required to verify and record the identity of each company's beneficial owners. That

information is currently available to local regulatory and law enforcement authorities on lawful request and can be disclosed to the law enforcement, tax and regulatory authorities of other jurisdictions, including the UK, through international co-operation arrangements. The Cayman beneficial ownership system is already more wide ranging and effective than that operated in the UK and many other international financial centres.

Jude Scott, the CEO of Cayman Finance, has commented that:

> "*We are pleased the UK Government has recognised that our licensed corporate services provider verified beneficial ownership system is a world class system that provides for due diligence know-your-customer checks that are critical to proper law enforcement authorities conducting legitimate investigations and is superior to other proposed systems. Whilst there are already agreements in place that allow UK law enforcement agencies to request and obtain beneficial ownership information for the Cayman Islands, we have agreed to an enhancement to that system which will help the UK law enforcement agencies access that information with the utmost urgency, but in a way that is also appropriate for our jurisdiction. This is not a public central register.*"

It is anticipated that amendments will be made to a number of existing Cayman laws to provide for the implementation of these commitments.

Data Protection

(i) High Court Judgment on Dawn Raids addresses Data Protection issues

On 5 April 2016, the High Court (Barrett J) delivered its judgment in the CRH plc, Irish Cement Limited and Seamus Lynch v The Competition and Consumer Protection Commission (the "**CCPC**") [2016] IEHC 162.

This judgment relates to a dawn raid carried out by the CCPC at the premises of Irish Cement Limited ("**Irish Cement**"), pursuant to a search warrant, in relation to an investigation into alleged contravention of competition law by Irish Cement. During the course of the raid, the CCPC took a copy of the entire e-mail box of Mr Lynch, a senior executive within the CRH Group, of which Irish Cement is part. The High Court was satisfied, that on the balance of probabilities, that some of the emails and attachments in Mr Lynch's email box were not caught by the terms of the search warrant. The central issue before the High Court was what should be done with the emails and attachments which it was claimed the CCPC did not lawfully have in its possession.

Amongst the declarations sought, the plaintiffs sought a declaration that the CCPC had acted in breach of the Data Protection Acts 1988 and 2003. The High Court was not

satisfied to grant this declaration as it noted in its judgment that, in respect of personal data to which the CCPC was not entitled, it was open to the persons present at the time of the dawn raid to refuse to release some or all of the personal data being sought. Barrett J went on to state:

> *"But, perhaps in the general spirit of cooperation that informed Irish Cement's actions vis-à-vis the Commission officials on the day of the 'dawn raid', Irish Cement elected to release the data sought. This being so, it cannot now 'off-load' all the consequences of any such election onto the Commission."* (para. 69 of the Judgment)

The High Court further stated (at para. 70) the following:

> *"The long and the short of the foregoing is that: (1) Irish Cement allowed (a) the release of certain personal data to the Commission which is covered by s.8(e) – in which case no liability of any nature arises for either Irish Cement or the Commission, and/or (b) the release of certain personal data to the Commission, to which the Commission has no entitlement – in which case Irish Cement is liable as data controller for its breach of the Data Protection Acts in this regard; and*
> *(2) the Commission may have in its possession some personal data that was released to it without the relevant data subject consenting to such release and without there being a s.8 exemption applicable to such release."*

This judgment highlights the issues that can arise for data controllers in respect of regulatory investigations and inspections where an authority seeks or obtains personal data which is not necessary for the investigation or inspection.

A full copy of the High Court judgment can be found here:

http://www.courts.ie/Judgments.nsf/0/9E7ECF2C5B64FCA380257FA400365CCC

(ii) EU Parliament approves data protection reform package

On 14 April 2016, the European Parliament formally approved the EU's general data protection reform package after more than 4 years of negotiation and roughly 4,000 amendments overhauling the EU's data protection rules.

The package comprises the General Data Protection Regulation ("**GDPR**") which will replace the Data Protection Directive (95/46/EC) and a Data Protection Directive for the police and criminal justice sector which will replace the Framework Decision for the police and criminal justice sector.

On 4 May 2016, the official text of the GDPR and the Directive were published in the Official Journal of the EU. The GDPR will be directly applicable in all Member States and

shall apply from 25 May 2018. The Directive entered into force on 5 May 2016 and EU Member States are required to transpose it into national law by 6 May 2018.

A copy of the GDPR is available at the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN

A copy of the Directive may be accessed via the link below:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L0680&from=EN

(iii) Statement of the Article 29 Working Party on the Opinion on the EU-U.S. Privacy Shield

The Article 29 Working Party ("**WP29**") has published its opinion on the EU-U.S. Privacy Shield (the "**Privacy Shield**") and has concluded that although the proposed new arrangement is an improvement on Safe Harbour, it requires further work. The Privacy Shield was developed jointly by the European Commission and the US Department of Commerce to replace the Safe Harbour framework, which was declared invalid by the Court of Justice in the 2014 Schrems case.

The WP29, an advisory group composed of representatives of the national data protection authorities, the European Data Protection Supervisor and the European Commission, adopted an opinion on the Privacy Shield draft adequacy decision on 13 April 2016.

The WP29 welcomed the "major improvements" the Privacy Shield offers compared to the Safe Harbour decision, stated that it still had "strong concerns" on both the commercial aspects of the Privacy Shield and the potential access by US public authorities to personal data transferred from the EU to the US under the Privacy Shield. The WP29 states in there is an overall lack of clarity and that the Privacy Shield needs to be consistent with the EU data protection framework. WP29 urges the Commission to resolve their noted concerns and provide the requested clarifications in order to ensure the proper equivalency of the Privacy Shield to that of the EU.

A full copy of the WP29 Opinion on the Privacy Shield can be found here:

http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2016/wp238_en.pdf

(iv) Executive Summary of Preliminary Opinion of the European Data Protection Supervisor on the US-EU agreement on the protection of personal information relating to the prevention, investigation, detection and prosecution of criminal offences

On 25 May 2016, the Executive Summary of the Preliminary Opinion (the "**Opinion**") of the European Data Protection Supervisor ("**EDPS**") on the agreement between the United States of America ("**US**") and the European Union ("**EU**") on the protection of personal information relating to the prevention, investigation, detection and prosecution of criminal offences (the "**Agreement**") was published in the Official Journal of the EU (Notice 2016/C 186/04).

The Agreement is an international law enforcement agreement aimed at ensuring a high level of data protection for the personal data transferred between the US and the EU for the purpose of preventing, investigating, detecting or prosecuting criminal offences, including terrorism.

After negotiations between the European Commission and the US, the Agreement was initialled on 8 September 2015. The European Parliament must consent to the initialled text of the Agreement and the Council must sign it. Until this consent has been given and the Agreement has been formally signed, negotiations can be reopened on specific points and it is in this context that the EDPS issued the Opinion.

In the Opinion, the EDPS notes his support for the European Commission's efforts to conclude the Agreement with the US but also notes that safeguards for individuals must be clear and effective in order to fully comply with EU primary law.

The Opinion aims to provide constructive and objective advice to EU institutions given that when the European Commission finalise this Agreement it will have broad ramifications, not only for EU-US law enforcement cooperation but also for future international accords.

In the Opinion, the EDPS recommends the following three essential improvements to the text of the Agreement to ensure compliance with EU law:

- Clarification that all the safeguards apply to all individuals, not only to EU nationals;
- Ensuring judicial redress provisions are effective within the meaning of the Charter of Fundamental Rights; and
- Clarification that transfers of sensitive data in bulk are not authorised.

The EDPS also highlights other aspects where important clarifications are recommended.

The Agreement is separate from but must be considered in conjunction with the EU-US Privacy Shield on the transfer of personal information in the commercial environment.

The Executive Summary of the Opinion can be found here:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XX0525(01)&from=EN

(v) European Commission Consultation of e-Privacy Directive

The European Commission has launched a public consultation on the current text of the e-Privacy Directive 2002/58/EC coupled with possible changes to the existing legal framework to make sure it is up to date with the advancements of the digital age. The e-Privacy Directive provides for the harmonisation of the national provisions required to ensure an equivalent level of protection of fundamental rights and freedoms, and in particular the right to privacy and confidentiality.

Interested parties, who wish to participate in the consultation process, have until 5 July 2016 to submit responses to the European Commission's online questionnaire who will then begin the process of consolidating all feedback received in preparation for a new legislative proposal on e-Privacy by the end of 2016.

The European Commission has already identified several issues as needing to be addressed in the review of the e-Privacy Directive including: ensuring consistency of ePrivacy rules with the provisions of the GDPR; enhancing security and confidentiality of communications and simplifying the electronic marketing rules to avoid inconsistencies between Member States.

The public consultation can be responded to at the following:

https://ec.europa.eu/eusurvey/runner/EPRIVACYReview2016

Dillon Eustace
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