

Funds Quarterly Legal and Regulatory Update

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DILLON  EUSTACE

DUBLIN CAYMAN ISLANDS NEW YORK TOKYO

▣ Table of Contents

Undertakings in Collective Investments and Transferable Securities (“UCITS”).....	2
Alternative Investment Fund Management Directive (“AIFMD”).....	3
European Venture Capital Funds (“EuVECA”) & European Social Entrepreneurship Funds (“EuSEF”).....	4
Funds - Liquidity Risk Management & Leverage & MiFID II.....	4
Investment Limited Partnership	6
Money Market Funds Regulation (“MMF Regulation”)	6
Packaged Retail Insurance-based Investment Products (“PRIIPs”).....	7
European Markets Infrastructure Regulation (“EMIR”)	9
Proposed Regulation on CCP Recovery and Resolution	11
Benchmark Regulation.....	12
European Securities and Markets Authority (“ESMA”)	13
Short Selling.....	14
Capital Markets Union (“CMU”).....	15
Market Abuse Regulation (“MAR”).....	18
Consumer Law Directives	19
Transparency Directive	19
Prospectus Directive	19
Credit Rating Agencies (“CRAs”).....	20
Central Bank of Ireland	20
Minimum Competency Code and Minimum Competency Regulations	21
Financial Services and Pensions Ombudsman	22
Anti-Money Laundering (“AML”)/Counter-Terrorist Financing (“CTF”)	23
Data Protection	25
Non-Financial Reporting	28

▣ FUNDS QUARTERLY LEGAL AND REGULATORY UPDATE

Undertakings in Collective Investments and Transferable Securities (“UCITS”)

(i) **ESMA publishes updates to the Q&A on application of UCITS Directive**

On 11 July 2017, the European Securities and Markets Authority (“**ESMA**”) published an updated Q&A on the application of the UCITS Directive (2009/65/EC), as revised by UCITS V (2014/91/EU) (together the “**UCITS Directive**”). The UCITS Q&A now includes two new questions and answers on:

- ▣ Issuer concentration – relating to 40% limit. See Section 1 Question 5a; and
- ▣ Group links and cooling-off periods – relating to when a person (being a person who served in a management body or supervisory body of an entity within a group or was employed by such an entity) deemed to fulfil the independence requirement. See Section 8 Question 1).

The updated Q&A document is available for download [here](#).

(ii) **Central Bank publishes revised UCITS Q&A**

On 4 August 2017, the Central Bank published a nineteenth edition UCITS Q&A. The revised UCITS Q&A includes the following:

- ▣ New questions ID 1079 - ID 1083. These relate to the Central Bank UCITS (Amendment) Regulations 2017 and also concerns the initial capital requirement for depositary, computation of half of a board of directors where the number of directors is uneven; meaning of reverse leverage; and the holding of cash booked in accounts as ancillary liquidity; and
- ▣ New question ID 1084 - This relates to the governing law of management company agreement.

The revised UCITS Q&A is available for download [here](#).

(iii) **Central Bank publishes revised UCITS (Amendment) Regulations 2017**

The Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2017, S.I. No. 344 of 2017, “(the “**UCITS (Amendment) Regulations 2017**”) were signed into Irish law on 27 July 2017.

The amendments effected by the UCITS (Amendment) Regulations 2017 comprise mainly:

- ▣ Certain amendments and clarifications to the principal UCITS Regulations following the implementation of UCITS V; and
- ▣ Certain amendments and clarifications arising from the Central Bank's Feedback Statement to CP 86 as published by the Central Bank, together with further guidance (“**Guidance**”) for fund management companies, on 19 December 2016. The Guidance covered managerial functions, requirements for director residency, operational issues and procedural matters.

The Central Bank subsequently published Issue 6 of its Markets Update on 4 August 2017 with an updated UCITS Q&A and updated Guidance on UCITS Financial Derivative Instruments and Efficient Portfolio Management.

The revised UCITS (Amendment) Regulations 2017 is available for download [here](#).

(iv) Central Bank publishes updated Guidance on UCITS Financial Derivative Instruments and Efficient Portfolio Management

On 4 August 2017, the Central Bank published updated Guidance on UCITS Financial Derivative Instruments and Efficient Portfolio Management which includes an additional provision on disclosure requirements for financial derivative instruments in periodic reports and which is located on page 32 of the guidance.

The updated UCITS Financial Derivative Instruments and Efficient Portfolio Management Guidance is available for download [here](#).

Alternative Investment Fund Management Directive (“AIFMD”)

(i) ESMA publishes updates to the Q&A on application of AIFMD

On 11 July 2017, ESMA published an updated Q&A on the application of the Alternative Investment Fund Managers Directive (“**AIFMD**”).

The AIFMD Q&A now includes three new questions and answers on the reporting requirements for:

- ▣ Loans purchased on the secondary market;
- ▣ Conversion of the total value of assets under management (AUM); and
- ▣ Currency of the net asset value (NAV).

The updated Q&A document is available for download [here](#).

European Venture Capital Funds (“EuVECA”) & European Social Entrepreneurship Funds (“EuSEF”)

(i) **European Parliament adopts Regulation to amend EuVECA Regulation and EuSEF Regulation**

On 14 September 2017, the European Parliament published a press release indicating that it has voted to adopt the proposed Regulation amending the European Venture Capital Funds Regulation (Regulation 345/2013) (“**EuVECA Regulation**”) and the European Social Entrepreneurship Funds Regulation (Regulation 346/2013) (“**EuSEF Regulation**”). The next step is for the Regulation to be formally adopted by the European Council.

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

Funds - Liquidity Risk Management & Leverage & MiFID II

(i) **IOSCO publishes consultation report on liquidity risk management recommendations and good practices**

On 6 July 2017, the International Organization of Securities Commissions (“**IOSCO**”) published for consultation a report concerning liquidity risk management recommendations for collective investment schemes (CR04/2017). On that date, IOSCO also published for consultation a report containing good practices and issues for consideration relating to open-ended fund liquidity and risk management (CR05/2017). The deadline for responses to both consultations is 18 September 2017.

▣ The CR04/2017 Consultation Paper is available for download [here](#).

▣ The CR05/2017 Consultation Report is available for download [here](#).

(ii) **EFAMA and AMIC publish joint report on the use of leverage in investment funds in Europe**

On 19 July 2017, the European Fund and Asset Management Association (“**EFAMA**”) and the Asset Management and Investors Council (“**AMIC**”) published a joint report on the use of leverage in investment funds in Europe.

The report found the EU regulatory framework, notably the UCITS and AIFMD framework, to be “sound and efficient” in recent years, however the report suggested further changes to “improve monitoring and analysis of leverage risk”, including the development of global leverage and risk measurements. In addition, the report suggested improved data sharing among regulators both in the EU and globally, and updating the methods used for the global calculation of leverage and risk, such as the 2010 CESR guidelines.

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

(iii) EFAMA publishes a European MiFID template which will assist AIFM and UCITS ManCos

On 7 August 2017, EFAMA endorsed and published a European MiFID information exchange template, which was designed by a European Working Group consisting of European asset managers, banks, insurers and distributors.

The template provides a functional description of the minimum set of data (defining a product's target market and disclosing its costs and charges) for product manufacturers, such as asset managers, to provide to their advisers and/or distributors to help them fulfil their regulatory requirements imposed by MiFID II, which comes into effect on 3 January, 2018.

MiFID II requires all advisers and distributors to provide clients with a pre-sale costs and charges projection and an annual, personalised costs and charges report afterwards. In addition, product manufacturers must identify the target market for whom the fund is appropriate and distributors will subsequently have to report back to show that only those in the target market have invested.

The template will be of assistance to AIFM and UCITS ManCo clients who, despite not being directly subject to MiFID II requirements, will work with their distributors to provide the relevant data outlined in the template to allow those distributors to meet their reporting obligations under MiFID II.

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

(iv) Irish Funds publishes Q&A document on MiFID II

On 6 September 2017, Irish Funds published a Q&A document on MiFID II, which addresses the implications for the Irish funds industry.

Questions and answers are included on:

- ▣ General scoping matters;
- ▣ Inducements, payments for research and disclosures of costs;
- ▣ Product governance; and
- ▣ Investment Managers/Advisers of AIFs/UCITS.

The Q&A also sets out action points for UCITS Mancos and AIFMs to consider.

MiFID II does not apply directly to UCITS ManCos and AIFMs which are not authorised to carry out MiFID investment services. However, UCITS ManCos and AIFMs typically contract with service providers who provide MiFID investment services in respect of Irish UCITS and AIFs as part of a delegation model framework. The Q&A has been prepared by the Irish

Funds MiFID II Working Group to assist these UCITS ManCos and AIFMs with regard to matters relating to the implementation of MiFID II. As industry progresses with the implementation of MiFID II by 3 January 2018, further Q&As may be published in order to address issues arising. The Irish Funds MiFID II Working Group continues to monitor and engage on MiFID II implementation.

A copy of the Q&A is available to members of Irish Funds through the association's website portal.

Investment Limited Partnership

(i) Reform of Irish Legislative Framework for Investment Limited Partnerships

On 18 July 2017, the Minister for Finance and Public Expenditure and Reform in Ireland announced that the Government has approved the legal drafting of the Investment Limited Partnership (Amendment) Bill, 2017. The aim of the Bill is to modernise the current investment limited partnership legislation in Ireland.

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

Money Market Funds Regulation (“MMF Regulation”)

(i) MMF Regulation enters into force on 20 July 2017

Regulation (EU) 2017/1131 on money market funds (the “**MMF Regulation**”) entered into force on 20 July 2017. The MMF Regulation will be effective from 21 July 2018, with certain exceptions.

Consequently the provisions of the MMF Regulation will not impact new MMFs until 21 July 2018 and existing UCITS and AIFs that meet the definition of an MMF under the MMF Regulation will have 18 months (i.e. by 21 January 2019) to comply with the requirements of the MMF Regulation and submit an application to their national competent authority for authorisation under the MMF Regulation.

A copy of the Dillon Eustace publication entitled “A Guide to Money Market Funds under the MMF Regulation” can be found [here](#).

(ii) ESMA publishes the responses to its consultation paper on the MMF Regulation

On 8 August 2017, ESMA published on its website the responses to its consultation paper dated 24 May 2017 on draft technical advice, implementing technical standards (“**ITS**”) and guidelines on the MMF Regulation.

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

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

(i) PRIIPs Regulation and PRIIPs Delegated Regulation - implications for collective investment schemes

Regulation (EU) No 1286/2014 of the European Parliament and of the Council (the “**PRIIPs Regulation**”) takes effect from 1 January 2018. The objective of the PRIIPs Regulation is to improve the transparency of certain products manufactured by the financial services industry which are offered to retail investors. In brief, the PRIIPs Regulation introduces an obligation on the manufacturers of packaged retail and insurance-based investment products (“**PRIIPs**”) to produce a key information document (“**KID**”) for retail investors so that they can understand and compare the key features and risks of a PRIIP.

European Commission Delegated Regulation (EU) 2017/653 of 8 March 2017 (the “**PRIIPs Delegated Regulation**”) supplements the PRIIPs Regulation by laying down the regulatory technical standards with regard to the presentation, content, review and revision of such a KID and the conditions for fulfilling the requirement to provide such a KID.

The PRIIPs Regulation makes it clear that the obligations to prepare a KID arise where the relevant PRIIP is offered or sold to any “retail investor”. Therefore, the PRIIPs Regulation has implications for those collective investment schemes which offer or sell shares/units to “retail investors”. A “retail investor” has the meaning prescribed to “retail client” within the meaning of Annex II of Directive 2014/65/EU - Markets in Financial Instruments Directive II) (“**MiFID II**”), being “a client who is not a professional client”.

A collective investment scheme (both UCITS and AIFs) may qualify as a PRIIP and therefore be subject to the provisions of the PRIIPs Regulation if it is the case that it is offered or sold to a “retail investor” within the EEA. UCITS are exempt from the PRIIPs KID regime until 31 December 2019.

It should be noted that the QIAIF regime permits investors other than those who constitute “professional clients” within the meaning of MiFID II to acquire shares in the QIAIF provided that they either: (i) receives an appraisal from an EU credit institution, a MiFID firm or a UCITS management company that they have the appropriate expertise, experience and knowledge to adequately understand the investment in the QIAIF; or (ii) certify that they are an informed investor by confirming in writing that they have such knowledge of and experience in financial and business matters as would enable the investor to properly evaluate the merits and risks of the prospective investment or confirming in writing to the QIAIF that their business involves the management, acquisition or disposal of property of the same kind as the property of the QIAIF.

If it is the case that a QIAIF will continue to be offered or sold to such categories of investors within the EEA after 1 January 2018, this may trigger a requirement to prepare a KID in accordance with the provisions of the PRIIPs Regulation. A retail investor AIF will also be required to prepare a KID if it is the case that it is offered or sold to investors other than “professional clients” within the meaning of MiFID II.

If it is the case that the collective investment scheme is only offered within the EEA to “professional clients” within the meaning of MiFID II, it may be advisable for the collective investment scheme to make certain amendments to its fund documentation to reflect this position.

Dillon Eustace has prepared an article entitled “Final Countdown to PRIIPs – New Regulatory Technical Standards” which can be found [here](#).

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

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

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

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

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

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

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

A copy of the guidelines is available for download [here](#).

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

On 28 July 2017, the ESAs published final technical advice to the European Commission specifying the details of the procedures used to establish whether a PRIIP targets specific environmental or social objectives and sets out guidelines on how to ensure that these objectives are consistently adhered to. The technical advice followed an earlier consultation launched by the ESAs on 10 February 2017 in response to a mandate from the European Commission. The consultation closed on 24 March 2017.

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

European Markets Infrastructure Regulation (“EMIR”)

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

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

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

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

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

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

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

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

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

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

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

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

(v) EMIR Reform - ESMA letter to Commission on third country regimes

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

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

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

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

- ▣ Delegated Regulation (C(2017) 6270 final): This amends the EMIR RTS contained in Delegated Regulation (EU) No 149/2013. A copy of Delegated Regulation can be found [here](#).
- ▣ Delegated Regulation (C(2017) 6268 final). This contains an RTS which seeks to ensure consistency between Regulation (EU) No 600/2014 ("MiFIR") with the EMIR requirements. A copy of Delegated Regulation can be found [here](#).

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

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

On 29 September 2017, the Council of the EU published a Presidency compromise proposal on the proposed Regulation amending EMIR on:

- ▣ The clearing obligations;
- ▣ The suspension of the clearing obligation;
- ▣ The reporting requirements;

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

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

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

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

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

Proposed Regulation on CCP Recovery and Resolution

(i) ECB publishes opinion on proposed Regulation on CCP recovery and resolution

On 25 September 2017, the European Central Bank (“**ECB**”) published its opinion on the proposed Regulation on the recovery and resolution of central counterparties (“**CCPs**”). The ECB supports the European Commission's initiative to establish a dedicated EU framework for the recovery and resolution of CCPs and noted that improvements can be made in some areas such as:

- ▣ A greater opportunity for clearing participants to estimate and manage their potential exposure under the Regulation with a loss allocation tool;
- ▣ Increased safeguards for public sector support for CCP's in resolution;
- ▣ Recovery and resolution arrangements for CCP's should be co-ordinated across EU CCP's as one CCP's failure is likely to affect several CCP's at once;
- ▣ The proposed Regulation should be closely aligned with international standards on the recovery and resolution of CCP's; and
- ▣ To clarify the Regulation as to CCP's application for a banking licence.

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

(ii) ECON publishes draft report on proposed Regulation on CCP recovery and resolution

On 27 September 2017, the European Parliament's Committee on Economic and Monetary Affairs (“**ECON**”) published its draft report on the proposed Regulation on the recovery and resolution of CCPs.

The draft report states that the amendments should improve the legal protection for the relevant resolution authority. However, during this process the resolution authority must have full discretion to use the resolution tools that it believes to be the most effective to achieve the resolution, addressing the systemic problems and protecting taxpayers.

While protecting the tax payer and the general public from systemic risk, the report states that there also must be adequate protection for clients of the clearing members and indirect clients. This needs to be recognised within the resolution institutions, the resolution committee within ESMA and in the general transparency requirements.

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

Benchmark Regulation

(i) ESMA publishes updated Q&As on Benchmarks Regulation

On 5 July 2017, ESMA published a new set of questions and answers on EU Regulation 2016/1011 (the “**Benchmarks Regulation**”). The Q&A include two answers regarding the transitional provisions under the Benchmarks Regulation, clarifying which benchmarks supervised entities will be allowed to use after 1 January 2018 under transitional provisions.

On 29 September 2017, ESMA published an updated version of its Q&As, with four new Q&As on the Benchmarks Regulation. The four new Q&As are on:

- ▣ The application of the BMR to EU and third country central banks;
- ▣ The exemption relating to single reference price;
- ▣ The definition of "family of benchmarks"; and
- ▣ The definition of "use of a benchmark".

A copy of the updated version of its Q&As can be found [here](#).

(ii) ESMA published a consultation paper on draft guidelines on non-significant benchmarks under Benchmarks Regulation

On 29 September 2017, ESMA published a consultation paper on draft guidelines for non-significant benchmarks under the Benchmarks Regulation.

The consultation paper summarises the proposed content of each of the guidelines for non-significant benchmarks. Chapter 5 deals with the guidelines on the procedures, characteristics and positioning of oversight function. Chapter 6 deals with the guidelines on input data. Chapter 7 deals with the guidelines on the transparency of methodology. Chapter 8 deals with the guidelines on the governance and control requirements for supervised

contributors. The deadline for comments on the draft guidelines is 30 November 2017. A copy of the consultation paper can be found [here](#).

A related press release from ESMA explains that the proposals mentioned in the consultation paper are for lighter requirements for non-significant benchmarks, their administrators and supervised contributors in the areas covered, than for significant benchmarks. The press release can be found [here](#).

(iii) European Commission adopts three Delegated Regulations supplementing Benchmarks Regulation

On 29 September 2017, the European Commission adopted three Delegated Regulations supplementing the Benchmarks Regulation:

- ▣ Commission Delegated Regulation (C(2017) 6474 final) which specifies the technical elements of the definitions laid down in paragraph 1 of Article 3 of the Benchmarks Regulation to public availability and administering the arrangements for determining a benchmark. A copy of the Commission Delegated Regulation can be found [here](#).
- ▣ Commission Delegated Regulation (C(2017) 6464 final) which specifies how the nominal amount of financial instruments other than derivatives, the notional amount of derivatives and the net asset value of investment funds are to be assessed. A copy of the Commission Delegated Regulation can be found [here](#).
- ▣ Commission Delegated Regulation (C(2017) 6469 final) which specifies how the criteria of Article 20(1)(c)(iii) is to be applied for assessing significant events that would have an adverse impact on market integrity, stability, consumers, the economy or the financing of households and businesses in one or more member states. A copy of the Commission Delegated Regulation can be found [here](#).

The three adopted Commission Delegated Regulations are based on drafts consulted on between 22 June and 20 July 2017.

If neither the Council of the EU and the European Parliament object to the Delegated Regulations, they will enter into force 20 days after their publication in the Official Journal of the EU.

European Securities and Markets Authority (“ESMA”)

(i) ESMA published detailed opinions to support supervisory convergence in the context of the UK withdrawing from the EU

On 13 July 2017, ESMA published three opinions setting out sector-specific principles in the areas of:

- ▣ Investment firms;

- ▣ Investment management; and
- ▣ Secondary markets.

The opinions provide guidance to NCAs aimed at ensuring a consistent interpretation of the requirements relating to authorisation, supervision and enforcement in order to avoid the development of regulatory and supervisory arbitrage risks related to the relocation of entities, activities and functions from the UK.

ESMA's opinion on investment management relates to the investment management sector in the context of the anticipated relocation of entities, activities and functions from the UK as a consequence of Brexit. Focused on UCITS ManCos, self-managed investment companies and authorised AIFMs, the opinion addresses areas of potential regulatory and supervisory arbitrage with particular focus on authorisation, governance and internal controls, delegation and effective supervision.

For further details please refer to the Dillon Eustace Publication entitled "ESMA's Brexit Opinion on Investment Management" which is available [here](#).

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

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

A copy of the opinion on secondary markets is available [here](#)

Short Selling

(i) **ESMA issues consultation paper on the evaluation of the short-selling regulation**

On 7 July 2017, ESMA issued a consultation paper on certain elements of the Regulation (EU) No 236/2012 on short selling and certain aspect of credit default swaps (the "**Short Selling Regulation**").

The three main areas of focus of the consultation paper were: (a) the scope and the functioning of the exemption for market making activities; (b) the procedure for imposing a short term ban on short-selling in case of a significant fall in price of a financial instrument; and (c) the transparency of net short positions, and the related reporting and disclosure requirements.

On 12 September 2017, ESMA published the responses to the consultation paper. The final report will be published by 31 December 2017.

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

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

Capital Markets Union (“CMU”)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

As part of the CMU action plan, the European Commission is reviewing progress made in removing barriers to post-trade market infrastructure. The aim of the consultation is to gather views on a range of issues including the current state of post-trade markets, the main trends and challenges faced by post-trade services providers and users as well as the best ways to remove barriers, including through financial technology. Stakeholders are invited to provide feedback, using an online questionnaire, until 15 November 2017.

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

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

On 15 September 2017, the European Commission published a speech given on 14 September 2017 by the European Commissioner. The Commissioner set out a number of financial services initiatives that the Commission intends to take action before the end of 2017 or in early 2018 such as; (i) its proposals for reforms to European System of Financial Supervision ("ESFS") namely the review of the ESAs (that is, ESMA, EIOPA and the EBA)

and the European Systemic Risk Board (“**ESRB**”); (ii) its FinTech action plan; and (iii) its sustainable finance action plan.

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

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

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

On 20 September 2017, the European Commission published the legislative proposals that it has adopted to reform the European System of Financial Supervision (“**ESFS**”). It proposes:

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

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

(viii) EBA publishes discussion paper on its approach to FinTech

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

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

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

Market Abuse Regulation (“MAR”)

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

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

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

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

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

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

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

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

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

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

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

Consumer Law Directives

(i) **European Commission launches online consultation on targeted revisions to EU consumer law directives**

On 30 June 2017, following on from the results of the fitness check on EU consumer and marketing law, and the Consumer Rights Directive (2011/83/EU), the European Commission published an inception impact assessment and launched an online consultation to seek views on possible targeted amendments to key EU consumer law directives such as Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market (“**Unfair Commercial Practices Directive**”), Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees (“**Sales and Guarantees Directive**”), Directive 93/13/EEC on unfair terms in consumer contracts (“**Unfair Contract Terms Directive**”), Directive 98/6/EC on consumer protection in the indication of the prices of products offered to consumers (“**Price Indication Directive**”); Directive 2006/114/EC concerning misleading and comparative advertising (“**Misleading and Comparative Advertising Directive**”) and Directive 2009/22/EC on injunctions for the protection of consumers' interests (“**Injunctions Directive**”). The consultation closing date is 8 October 2017.

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

Transparency Directive

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

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

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

Prospectus Directive

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

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

The three Consultation Papers comprise:

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

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

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

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

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

A copy is available [here](#).

Credit Rating Agencies (“CRAs”)

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

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

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

Central Bank of Ireland

(i) Central Bank issues a Brexit FAQ

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

The Central Bank’s FAQ addresses at a high level a number of topics including; (i) the Central Bank’s approach to authorisation, its timelines and requirements; (ii) the impact of Brexit on existing Irish authorised firms; (iii) the Central Bank’s proposed approach to issues concerning a firm’s substance in Ireland; (iv) and the Central Bank’s approach to outsourcing to the UK firms. It also deals with other questions such as whether Ireland has a similar regime to the UK’s Senior Managers Regime and Certification Regimes. It also addresses

the Central Bank's views on centralised risk management in the UK or elsewhere and whether a firm's key employees can hold more than one position before the entity goes live. The FAQ provides links to the Central Bank's relevant web-site application documentation as well as explanatory material on the authorisation processes for the different regulatory regimes.

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

(ii) Exchange Traded Funds - publication of responses to Discussion Paper and Central Bank to host ETF conference

On 14 September 2017, the Central Bank published the responses it received on the Discussion Paper on Exchange Traded Funds ("ETF's"). The deadline for responses closed on 11 August 2017. The purpose of the Discussion Paper was to gather further information on ETFs from interested stakeholders to help inform both domestic and global discussions on ETFs. The Central Bank is also hosting a Conference entitled "ETFs – Stability and Growth" on 29 November 2017 in the Convention Centre Dublin, the topics discussed will be those included in the Discussion Paper.

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

Conference information can be found [here](#).

(iii) Enhancements to the Regulated Disclosures submission process

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

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

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

Minimum Competency Code and Minimum Competency Regulations

(i) Central Bank Introduces New Minimum Competency Standards

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

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

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

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

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

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

Financial Services and Pensions Ombudsman

(i) Changes to Financial Services Regulation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The annex to the letter contains a roadmap which aims at delivering a new approach for identifying high-risk third countries by following a staged approach, focusing on priority third countries first. The Commission wants to build on, complement, and maintain a consistency with the work of the Financial Action Task Force (“**FATF**”).

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

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

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

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

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

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

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

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

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

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

(vii) FATF publishes Mutual Evaluation Report on Ireland

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

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

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

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

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

Data Protection

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

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

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

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

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

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

However the EDPS raised certain concerns on the Proposal as set out in the Opinion. The full text of the Opinion can be accessed [here](#).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Non-Financial Reporting

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

The European Union (Disclosure of non-financial and diversity information by certain large undertakings and groups) Regulations 2017 (the “**2017 Non-Financial Disclosure Regulations**”) were signed into Irish law 30 July 2017 by the Minister for Jobs, Enterprise and Innovation. The 2017 Non-Financial Disclosure Regulations implement the EU Directive on Non-Financial Reporting and will come into operation on 21 August 2017.

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

Dillon Eustace
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